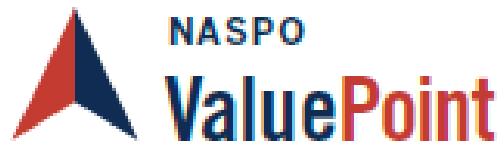




**The State of Utah**  
Division of Purchasing & General Services

In conjunction with



**Request for Proposals**

**State of Utah Solicitation Number SK18001**

**NASPO ValuePoint Master Agreement for  
Data Communications Products &  
Services**

July 13, 2018

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## RFP Administrative Information

RFP Title:	Data Communications Products & Services
RFP Project Description:	The State of Utah in conjunction with NASPO ValuePoint, is seeking Contractor(s) to provide data communications products and services as described within this RFP.
RFP Lead:	Solomon Kingston, State Contract Analyst State of Utah, Division of Purchasing <a href="mailto:skingston@utah.gov">skingston@utah.gov</a> (801) 538-3228
Electronic Submission:	Proposals must be submitted electronically via Jaggaer (the Utah Public Procurement Place) here: <a href="http://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah">http://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah</a>  <b>Hard copy submissions will not be accepted.</b>  From the Jaggaer link type "SK18001" into the search bar, and click the search icon. The "Data Communications Products & Services" posting will appear.
Deadline To Receive Questions:	<b>August 17, 2018 at 1pm MDT/MST</b>
Question & Answers:	All questions, including those about Terms and Conditions, must be submitted through Jaggaer. Question must be submitted by the question deadline date
RFP Closing Date & Time:	<b>September 11, 2018 at 1pm MDT/MST</b>
Initial Term of Contract and Renewals:	The initial term of the Contract will be five (5) years with the option, upon mutual written agreement, for two (2) additional renewal periods of one (1) year each. Upon mutual agreement, the contract may be extended or amended.
<b>TAKE NOTE OF THE 0.25% NASPO VALUEPOINT ADMINISTRATIVE FEE DETAILED IN SECTION 6 OF THE NASPO VALUEPOINT STANDARD TERMS AND CONDITIONS, WHICH MUST BE INCORPORATED INTO YOUR BASE PRICE. OTHER STATES MAY NEGOTIATE ADDITIONAL ADMINISTRATIVE FEES IN THEIR PARTICIPATING ADDENDA FOLLOWING AWARD OF A MASTER AGREEMENT.</b>	

# **REQUEST FOR PROPOSALS**

## **NASPO ValuePoint Data Communications Products & Services**

### **Solicitation # SK18001**

This Request for Proposals (“RFP”), having been determined to be the appropriate procurement method to provide the best value to the Lead State, is designed to provide interested Offerors with sufficient basic information to submit proposals. It is not intended to limit a proposal's content or exclude any relevant or essential data. Offerors are at liberty and are encouraged to expand upon the specifications to evidence service capability. This RFP is issued in accordance with State of Utah Procurement Code, Utah Code Annotated (UCA) Chapter 63G-6a, and applicable Rules found in the Utah Administrative Code (UAC). If any provision of this RFP conflicts with the UCA or UAC, the UCA or UAC will take precedence.

## **SECTION 1: GENERAL INFORMATION**

### **1.1 PURPOSE OF REQUEST FOR PROPOSAL (RFP)**

The State of Utah, Division of Purchasing & General Services (Lead State) is requesting proposals for data communications products and services including all customer service, installation, and design services in furtherance of the NASPO ValuePoint Cooperative Purchasing Program. The purpose of this Request for Proposals (RFP) is to establish Master Agreements with qualified original equipment manufacturers (OEM's) to provide data communications products and related services for all Participating Entities. This solicitation does not allow for multiple firms represented by a distributor to respond. This solicitation does not allow for sister companies to team and submit offers. The objective of this RFP is to obtain best value, and in some cases achieve more favorable pricing, than is obtainable by an individual state or local government entity because of the collective volume of potential purchases by numerous state and local government entities. The Master Agreement(s) resulting from this procurement may be used by state governments (including departments, agencies, institutions), institutions of higher education, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), the District of Columbia, territories of the United States, and other eligible entities subject to approval of the individual state procurement director and compliance with local statutory and regulatory provisions.

The State of Utah Division of Purchasing does not guarantee any purchase amount under an awarded contract. Estimated quantities are for solicitation purposes only and are not to be construed as a guarantee.

Each Participating Entity may select the Fulfillment Partner(s) they choose to do business with during the Participating Addendum process. A Participating Entity may require the Fulfillment Partner(s) to submit additional information regarding their firm as part of the selection process during the execution of a Participating Addendum. This information could include, but is not limited to; business references, number of years in business, technical capabilities, information on past projects, and the experience of both their sales and installation personnel.

Each Participating Entity has the option to select one or more product categories or services from the resulting Master Agreement(s) during the execution of the Participating Addendum process.

Each Participating Entity has the option to negotiate an expanded product line within the product category offering and within the scope of this RFP during the Participating Addendum process.



The Awarded Vendor will be the sole point of contract responsibility. The Lead State Contract Administrator and Participating Entities will look solely to the awarded vendor for the performance of all contractual obligations, and the awarded vendor shall not be relieved for the non-performance of any Fulfillment Partner and/or all Subcontractors. Contract requirements such as websites, reporting, etc. are the responsibility of the Awarded Vendor. Awarded Vendors must provide education and guidance on use of the Master Agreement and Participating Addendums.

Lease Option (Optional): Participating Entities reserve the right to determine whether it will utilize leasing options, if available from a selected OEM, during the Participating Addendum process. In addition to providing the proposed categories for Data Communications and related services, Offerors are encouraged to propose rental/financing options, including, but not limited to: lump sum payment, installment sale, rental and the option to lease any Data Communications hardware, supplies, and materials. The selected OEM will identify its rental/lease partner(s). Any State that Issues a Participating Addendum may choose to work with a selected OEM lease partner or obtain other financing or work with other leasing entities of the State's choice. Lease options are optional and are not factored into the evaluation process.

The resulting Master Agreement will be awarded with the understanding and agreement that it is for the sole convenience of the Participating Entities. The Participating Entities reserve the right to obtain like goods or services from other sources when necessary.

This RFP is designed to provide interested offerors with sufficient basic information to submit proposals meeting minimum requirements, but is not intended to limit a proposal's content or exclude any relevant or essential data. Proposals must be concise and as short as possible to allow for efficient evaluation. Blanket marketing material and unnecessary elaborate brochures or representations beyond what is sufficient to present a complete and effective proposals are not acceptable.

Offerors may respond to all or any of the award categories. The product, award categories are outlined in Attachment B – Scope of Work.

## **1.2 NASPO VALUEPOINT BACKGROUND INFORMATION**

NASPO ValuePoint (formerly known as WSCA-NASPO) is a cooperative purchasing program of all 50 states, the District of Columbia and the territories of the United States. The Program is facilitated by the NASPO Cooperative Purchasing Organization LLC, a nonprofit subsidiary of the National Association of State Procurement Officials (NASPO), doing business as NASPO ValuePoint. NASPO is a non-profit association dedicated to strengthening the procurement community through education, research, and communication. It is made up of the directors of the central purchasing offices in each of the 50 states, the District of Columbia and the territories of the United States. NASPO ValuePoint facilitates administration of the cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. For more information consult the following websites [www.naspovaluepoint.org](http://www.naspovaluepoint.org) and [www.naspo.org](http://www.naspo.org).

## **1.3 PARTICIPATING STATES**

In addition to the Lead State conducting this solicitation, the other Participating States that have requested to be named in this RFP as potential users of the resulting Master Agreement are listed

below. Other entities may become Participating Entities after award of the Master Agreement. Some States may have included special or unique Terms and Conditions for their state that will govern their state Participating Addendum in Attachment I. These Terms and Conditions are being provided as a courtesy to proposers to indicate which additional Terms and Conditions may be incorporated into that state Participating Addendum after award of the Master Agreement. Each State reserves the right to negotiate additional Terms and Conditions in its Participating Addendums.

The Lead State will not address questions or concerns or negotiate other States' terms and conditions. The Participating States must negotiate these Terms and Conditions directly with the supplier.

State	Est. Volume
CALIFORNIA	\$62,000,000.00
COLORADO	\$1,477,664
FLORIDA	\$36,000,000
HAWAII	\$10,000,000
ILLINOIS	N/A
LOUISIANA	\$15,000,000
MARYLAND	\$20,000,000
MICHIGAN	\$16,500,000
MONTANA	\$13,000,000
MINNESOTA	\$32,000,000
NEW JERSEY	\$15,000,000
OREGON	\$22,861,935
SOUTH DAKOTA	\$1,500,000.00
UTAH	\$91,642,561.61
WASHINGTON	\$45,929,528.78
<b>Total Est. Volume</b>	<b>\$382,911,689.24</b>

The information regarding estimated annual usage above has been provided by the individual States and a minimum or maximum level of sales volume is not guaranteed or implied. This is informational data only.

#### 1.4 HISTORIC USAGE

The following information represents historic usage from the current master agreements. No minimum or maximum level of sales volume are guaranteed or implied. This is informational data only.

### NASPO ValuePoint Contract Usage Summary

	2014	2015	2016	2017	2018
Total Aggregated Spend Across all States	\$272,426,398	\$365,617,238	\$426,497,493	\$449,156,585	

### **1.5. Lead State, Solicitation Number and Lead State Contract Administrator**

The State of Utah, Division of Purchasing and General Services is the Lead State and issuing office for this document and all subsequent addenda relating to it. The reference number for the transaction is Solicitation # SK18001. This number must be referred to on all proposals, correspondence, and documentation relating to the RFP.

The Lead State Contract Administrator identified below is the Single Point of Contact during this procurement process. Offerors and interested persons shall direct to the Lead State Contract Administrator all questions concerning the procurement process, technical requirements of this RFP, contractual requirements, requests for brand approval, changes, clarifications, and protests, the award process, and any other questions that may arise related to this solicitation and the resulting Master Agreement. The Lead State Contract Administrator designated by the State of Utah, Division of Purchasing and General Services is:

Solomon Kingston, State Contract Analyst  
State of Utah, Division of Purchasing and General Services  
3150 State Office Building  
Capitol Hill Complex  
450 North State Street  
Salt Lake City, UT 84114  
[skingston@utah.gov](mailto:skingston@utah.gov)  
801-538-3228

### **1.6 QUESTION AND ANSWER PERIOD**

All questions MUST be submitted through JAGGAER (SciQuest) (<http://bids.scquest.com/apps/Router/PublicEvent?CustomerOrg=StateOfUtah>) during the designated time for questions ("Q&A period") listed on Jaggaer. Questions submitted through any other channel will not be answered. Questions may be answered in the order that they are submitted or may be compiled into one document and answered via an addendum. Answers disseminated by the State through the Jaggaer system shall serve as the official and binding position of the State and will constitute an addendum to this RFP.

Questions, exceptions, or notification to the State of any ambiguity, inconsistency, excessively restrictive requirement, or error in this RFP, MUST be submitted as a question through Jaggaer during the Q&A period.

An answered question or addenda may modify the specification or requirements of this RFP. Answered questions and addendums will be posted on Jaggaer. Offerors should periodically check Jaggaer for answered questions and addendums before the closing date. It is the responsibility of the Offerors to submit their proposal as required by this RFP, including any requirements contained in an answered question and/or addendum(s).

**Exceptions to scope/content of the RFP within an Offeror's proposal that have not been previously addressed within the Q&A period of the procurement are not allowed and may result in the Offeror's proposal being considered non-responsive.**

## **1.7 RESERVED**

### **1.8 ADDENDUMS**

Offerors are encouraged to periodically check Jaggaer for posted questions, answers and addendums. Offerors will not be notified by the Lead State or Jaggaer for each addendum issued under the RFP.

Any modification to this procurement will be made by addendum issued by the Lead State. Addendums to the RFP may be made for the purpose of making changes to: the scope of work, the schedule, the qualification requirements, the criteria, the weighting, or other requirements of the RFP.

After the due date and time for submitting a proposal to the RFP, at the discretion of the Lead State, addenda to the RFP may be limited to the Offerors that have submitted proposals, provided the addenda does not make a substantial change to the RFP that likely would have impacted the number of Offerors responding to the original publication of the RFP, in the opinion of the Lead State.

Authorized and properly issued addenda shall constitute the official and binding position of the State.

Any response to the RFP which has as its basis any communications or information received from sources other than the RFP or related addenda may be considered non-responsive and be rejected at the sole discretion of the State.

### **1.9 RESTRICTIONS ON COMMUNICATIONS**

From the issue date of the RFP until the contract award(s), Offerors are prohibited from communications regarding the RFP with other Participating Entities EXCEPT the Lead State. Failure to comply with this requirement may result in disqualification.

### **1.10 E-RATE - UNIVERSAL SERVICE FUND DISCOUNT**

To the extent the services offered are subject to the E-rate discount program, all award Contract Vendors must commit to participation in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the Contract Vendor.

In order to participate in E-Rate Offerors must appear on the USAC website as those who have a Service Provider Identification Number or "SPIN."

E-rate applicants must deduct the value of ineligible components bundled with eligible services unless those ineligible components qualify as "ancillary" to the eligible services under FCC rules. This process is called "cost allocation". Offeror must separate and illustrate the cost allocation for each component and service in a bundled offering provided to E-rate eligible State entities enabling each entity to properly apply for E-rate coverage of allowable services.

The Offeror shall not currently be subject to the Red Light Rule by the FCC, and will notify the applicant if they are later placed on Red Light Status with the FCC.

The Offeror must be able to honor the applicant's request for Service Provider Invoicing. Service

Provider Invoicing is a billing arrangement where the Offeror invoices the applicant for the discounted portion of the products and services the applicant requests. The Offeror would invoice USAC for the non-discounted portion of the applicant's products and services as a reimbursement.

### **1.11 DIVERSE BUSINESS PARTICIPATION**

By submitting a proposal to this RFP, the Offeror acknowledges and agrees to provide diverse business participation as outlined in this section and as requested by individual Participating Entities. For information purposes to Participating Entities, please propose to document SK18001 Attachment D-Fulfillment Partner List spreadsheet, which state(s) your business intends to provide local inclusion for these diverse business programs which may then be incorporated in a resulting state's Participating Addendum.

Diverse business participation means direct performance of commercially useful work. Examples of this include, but are not limited to:

- Fulfillment Partner performing services directly to agency customers through a fulfillment partner, distributor, installer type relationship.
- Subcontractors performing a portion of the work that is trackable, payment to the subcontractor can be validated, and the vendor can report usage back to the agency and scope of work performed.

Example of small and diverse businesses are defined as follows:

- Small Business: US Small Business Administration small business.
- Diverse Business (Minority, women, or veteran businesses): federal 8(a)/SDB, federal WBE, federal veteran-owned, nationally certified under a corporate certification program (National Supplier Development Council, Women's Business Enterprise National Council, or other diverse business certification your business recognizes), or certification recognized by one of the participating states.

Many Participating Entities have their own state specific diverse business programs and definitions.

The information provided in response to this section 1.11 will not be factored into an Offeror's qualifications or eligibility for a master agreement.

## **SECTION 2: SOLICITATION REQUIREMENTS, INFORMATION AND INSTRUCTIONS TO OFFERORS**

### **2.1 SUBMITTING YOUR PROPOSAL**

By submitting a proposal to this RFP, the Offeror acknowledges and agrees that the requirements, scope of work, and the evaluation process outlined in this RFP are understood, fair, equitable, and are not unduly restrictive. Any exceptions to the content of this RFP must be addressed within the Q&A period. The Offeror further acknowledges that it has read this RFP. More information regarding submittal requirements are provided within the RFP documents.

All costs incurred by an Offeror in the preparation and submission of a proposal, including any costs incurred during interviews, oral presentations, and/or product demonstrations are the responsibility of the Offeror and will not be reimbursed.

The cost proposal will be evaluated independently from the technical proposal, pursuant to Utah Code Annotated (UCA) § 63G-6a Part 7, and as such, **must** be submitted separate from the technical proposal. Separate, for the purposes of this solicitation, means that a separate document is submitted with the labeling instructions provided in this RFP document. Failure to submit cost or pricing data separately may result in your proposal being judged as non-responsive and ineligible for contract award. For electronic submissions, submitting the cost schedule as a separate document is considered separate.

**Proposals must be received by the posted due date and time posted on Jaggaer (“deadline”).** Proposals received after the deadline will be late and ineligible for consideration.

Proposals shall be submitted electronically through Jaggaer. We will not accept proposals submitted through any other means. For ease in distributing proposals for evaluation we must have electronic copies received through Jaggaer only.

**Electronic submission instructions:** When submitting a proposal electronically through Jaggaer, please allow sufficient time to complete the online forms and to upload proposal documents. The RFP will end at the deadline. If an Offeror is in the middle of uploading a proposal when the deadline arrives, the system will stop the upload process and the proposal will not be accepted by Jaggaer, and the attempted submission will be considered late and ineligible for consideration.

Electronic proposals may require uploading of electronic attachments. Jaggaer will accept a wide variety of document types as attachments. However, the State is unable to view certain documents. All documents must be uploaded in Jaggaer as separate files.

## **2.2 PROPOSAL FORMAT**

Proposals should be concise, straightforward and prepared simply and economically. Expensive displays, bindings, or promotional materials are neither desired nor required. However, there is no intent in these instructions to limit a proposal's content or exclude any relevant / essential data.

All Proposals must be submitted in the format outlined below. Offerors must title each document utilizing the names listed below. Proposals must be submitted as separate, individual documents pursuant to the titles listed below. The Jaggaer portal will outline where certain documents are to be submitted within the portal. All other documents may be submitted within the Supplier Attachments section of the Jaggaer portal.

If an Offeror submits a redacted version of a document it should clearly label the document as redacted. Detailed information on submitting each of these documents is provided below.

### **A. Document: Mandatory Minimum Requirements**

This document should constitute the Offeror's point-by-point response to each item described in section 4.1 the RFP.

Title this document upload – **[Vendor Name] Mandatory Minimums Response**

### **B. Document: OEM Evaluated Qualifications**

This document should constitute the Offeror's response Attachment B.1 An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement within Attachment B.1. This document should demonstrate

the Offeror's understanding of the desired overall performance expectations, deliverables, if any, and outcomes. In any case wherein the Offeror cannot comply with an evaluation criterion outlined in section 4.2, such inability must be stated in response to the applicable requirement.

Title this document upload – **[Vendor Name] Attachment B.1 Response**

**C. Document: Category Qualification Evaluation**

These documents should constitute the Offeror's response Attachment B.2 for each category Offeror is seeking an award. An Offeror's response must be a specific point-by-point response, in the order listed, to each requirement within Attachment B.2. A separate Attachment B.2 is required for each category Offeror is seeking an award.

Title these document uploads – **[Vendor Name] [Category #] Attachment B.2 Response**

**D. Document: Confidential, Protected or Proprietary Information & Redacted Copy.**

As provided in section 2.6, this document is to constitute Offeror's redacted proposal along with Attachment G.

If there is no protected / redacted information, provide a document with "None" in the body.

Failure to comply with this Section and Section 2.6 of the RFP releases the Lead State, NASPO ValuePoint, and Participating Entities from any obligation or liability arising from the inadvertent release of Offeror information.

Title this document – **[Vendor Name] Redacted Proposal**

**E. Document: Exceptions and/or Additions to the Standard Terms and Conditions.**

Proposed exceptions and/or additions to the Master Agreement Terms and Conditions, including the exhibits, must be submitted in this section. Offeror must provide all proposed exceptions and/or additions, including an Offeror's terms and conditions, license agreements, or service level agreements in Microsoft Word format for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in terms and conditions negotiations.

If there are no exceptions or additions to the Master Agreement Terms and Conditions, provide a document with "None" in the body.

Title this document – **[Vendor Name] Exceptions Additions to T&Cs**

**F. Document: Cost Proposal.**

The cost proposal (Attachment E) will be evaluated independently from the technical proposal, pursuant to Utah Code Annotated (UCA) § 63G-6-707(5), and as such, must be submitted separate from the technical proposal. Failure to submit cost or pricing data separately may result in your proposal being judged as non-

responsive and ineligible for contract award. Offeror's cost proposal must include the items provided in section 5.3 of the RFP.

Cost will be evaluated independently from the Mandatory Minimum Requirements, and the Technical responses. Inclusion of any cost or pricing data within the Detailed Technical Proposal will result in the proposal being judged as non-responsive for violation of UCA § 63G-6a-707(5).

Title this document – **[Vendor Name] Attachment E Cost Proposal**

**G. Document: Fulfillment Partner List.**

This document should constitute Offeror's response to the Attachment D Partner List as described in section 1.1.

Title this document – **[vendor name] Attachment D Fulfillment Partner List**

**H. Document: Optional Lease Option Information**

Offerors may submit, at their option, information pertaining to Lease Options. If a participating entity is interested in lease options, then they may negotiate terms of a lease option with a contractor or its fulfillment partner during the Participating Addendum process.

If there are no lease options provide a document with "None" in the body.

Title this document – **[Vendor Name] Lease Option Information**

## **2.3 CONTRACT AWARD INTENT**

It is anticipated that the RFP will result in multiple contract awards established by the following multiple award methodology: all offerors that meet/exceed all solicitation minimum requirements and the required evaluation score to be selected for award subject to successful terms and conditions negotiations.

Participating entities may consider execution of Participating Addenda through informal competitions, and Participating entities may base their "best value" selection of the offeror whose qualifications best meet their needs after reviewing qualifications outlined in the offeror's proposal and considering other information in the solicitation process relevant to their determination of best value (such as the proposals and evaluations).

The awarded Master Agreement(s) may be modified by the Lead State as a result of technological upgrades for the procurement item(s). Any modification for upgraded technology must be substantially within the scope of the original procurement or contract, and if both parties agree to the modification, then the contract may be modified, but it may not be extended beyond the term of the original awarded contract unless otherwise permitted by law.

## **2.4 LENGTH OF CONTRACT**

The contracts resulting from this RFP will be for a period of five (5) years, with a an option for two (2) additional renewal periods of one (1) year each. The State reserves the right to review the contract resulting from this RFP on a regular basis regarding performance and cost and may negotiate price/discount % off during the contract's term.



Offeror may offer maintenance / support agreements that extend beyond the resulting Master Agreement term pursuant to Attachment A section 27.

## **2.4.A DISCUSSIONS**

Discussions may be conducted with the Offerors who submit proposals determined to be reasonably susceptible of being selected for award, followed by an opportunity to make best and final offers pursuant to UCA § 63G-6a Part 7, but proposals may be accepted without discussions.

## **2.5 STANDARD CONTRACT TERMS AND CONDITIONS, EXCEPTIONS, AND NEGOTIATIONS**

Any contract resulting from this RFP will include the NASPO ValuePoint Master Agreement Terms and Conditions (Master Agreement Terms and Conditions), Attachment A, including Exhibits to Attachment A.

Exceptions and/or additions to the Master Agreement Terms and Conditions and other requirements of this RFP are strongly discouraged. Any exception and/or addition regarding the **Master Agreement Terms and Conditions** must be made in the Offeror's proposal. **The Lead State will not consider proposed modifications and/or additions to the Master Agreement Terms and Conditions after the deadline for proposals.** Exceptions and/or additions regarding the Master Agreement Terms and Conditions or other RFP provisions must contain the following:

1. The rationale for the specific requirement being unacceptable to the Offeror submitting the exception and/or addition;
2. Recommended verbiage for the Lead State's consideration that is consistent in content, context, and form with the Master Agreement Terms and Conditions;
3. Explanation of how the Lead State's acceptance of the recommended verbiage is fair and equitable to both the Lead State, the Participating Entities, and to the Offeror submitting the modification and/or exception.

Offerors may not submit requests for exceptions and/or additions by reference to an Offeror's website or URL. URLs provided with a proposal may result in that proposal being rejected as non-responsive. Offerors may submit questions during the Q&A period regarding the Master Agreement Terms and Conditions.

The Lead State may refuse to negotiate exceptions and/or additions that are determined to be excessive; that are inconsistent with similar contracts; and to warranties, insurance, or indemnification provisions that are necessary to protect the procurement unit after consultation with the Attorney General's Office or other applicable legal counsel.

For the RFP, the Lead State reserves the right to negotiate exceptions and/or additions to terms and conditions in a manner resulting in expeditious resolutions. This process may include beginning negotiations with the qualified Offeror having the least amount of exceptions and/or additions and concluding with the Offeror submitting the greatest number of exceptions and/or additions. Contracts may be executed and become effective as negotiations are completed; however, all of the resulting Master Agreement(s) will terminate on the same date.

If negotiations are required, Offeror must provide all documents in **Microsoft Word format** for redline editing. Offeror must also provide the name, contact information, and access to the person(s) that will be directly involved in legal negotiations.

An award resulting from the RFP is subject to successful contract terms and conditions negotiation (if required). The Lead State, at its sole discretion, will determine when contract terms and conditions negotiations become unproductive and will result in termination of award to that Offeror.

## **2.6 PROTECTED INFORMATION**

The Government Records Access and Management Act (GRAMA), UCA § 63G-2-305, provides in part that:

*the following records are protected if properly classified by a government entity:*

*(1) trade secrets as defined in Section 13-24-2, the Utah Uniform Trade Secrets Act, if the person submitting the trade secret has provided the governmental entity with the information specified in UCA § 63G-2-309 (Business Confidentiality Claims);*

*(2) commercial information or non-individual financial information obtained from a person*

*if:*

*(a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future;*

*(b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access; and*

*(c) the person submitting the information has provided the governmental entity with the information specified in UCA § 63G-2-309;*

*\* \* \* \* \**

*(6) records, the disclosure of which would impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract or agreement with a governmental entity, except, subject to Subsections (1) and (2), that this Subsection (6) does not restrict the right of a person to have access to, after the contract or grant has been awarded and signed by all parties, ...*

**Pricing may not be classified as confidential or protected and will be considered public information after award of the contract.**

**Process for Requesting Non-Disclosure:** Any Offeror requesting that a record be protected shall include with the proposal a Claim of Business Confidentiality. To protect information under a Claim of Business Confidentiality, the Offeror must complete the Claim of Business Confidentiality form with the following information:

1. Provide a written Claim of Business Confidentiality at the time the information (proposal) is provided to the state, and
2. Include a concise statement of reasons supporting the claim of business confidentiality (UCA § 63G-2-309(1)).
3. Submit an electronic “redacted” (excluding protected information) copy of the record. The redacted copy must clearly be marked “Redacted Version.”

The Claim of Business Confidentiality Form is provided as Attachment G.

**An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”, and if so identified, shall be considered non-responsive unless the Offeror removes the designation.**

**Redacted Copy:** If an Offeror submits a proposal that contains information claimed to be

business confidential or protected information, the Offeror must submit two separate proposals: one redacted version for public release, with all protected business confidential information either blacked-out or removed, clearly marked as "Redacted Version"; and one non-redacted version for evaluation purposes, clearly marked as "Protected Business Confidential."

The Lead State and NASPO ValuePoint are not liable or responsible for the disclosure of any confidential or proprietary information if the Offeror fails to follow the instructions of this section.

## **2.7 INTERVIEWS AND PRESENTATIONS**

The evaluation committee does not intend to conduct interviews or presentations but we reserve the right to do so if it is determined to be in the best interest of the Lead State. Interviews and presentations may be held at the option of the Lead State. The Lead State shall establish a date and time for the interviews or presentations and shall notify eligible Offerors of the procedures. Offerors invited to interviews or presentations shall be limited to those Offerors meeting the mandatory minimum requirements and mandatory minimum technical score threshold specified in the RFP. Representations made by an Offeror during interviews or presentations shall become an addendum to the Offeror's proposal and shall be documented. Representations must be consistent with Offeror's original proposal and may only be used for purposes of clarifying or filling in gaps in Offeror's proposal. Interviews and presentations will be at Offeror's expense.

## **2.8 RIGHT TO PUBLISH**

Throughout the duration of this procurement and Master Agreement term, Offerors, OEM's and their Fulfillment Partners must secure from the Lead State prior approval for the release of any information that pertains to the potential work or activities covered by this procurement or the Master Agreement. The OEM must not make any representations of Utah's or the ValuePoint cooperative's opinion or position as to the quality or effectiveness of the products and/or services that are the subject of this Master Agreement without prior written consent of the Lead State. Failure to adhere to this requirement may result in disqualification of the Offerors proposal or termination of the Master Agreement for cause.

## **2.9 CHANGES IN REPRESENTATION**

The Contracted Manufacturer must notify the Lead State of changes in the Contracted Manufacturer's Contract Administrator or Contract Usage Report Administrator, in advance and in writing and upon approval by the Lead State. The Lead State reserves the right to require a change in Contracted Supplier(s) representatives if the assigned representative(s) is not, in the opinion of the Lead State, meeting the Terms and Conditions of the contract.

## **2.10 STATE SEAL USE**

The Utah Great Seal Rule states, in section R622-2-3.Custody and Use, that "no facsimile or reproduction of the Great Seal may be manufactured, used, displayed, or otherwise employed by anyone without the written approval of the Lieutenant Governor."

Other Participating Entities have similar rules that must be adhered to by offerors or interested parties.

## **2.11 USAGE REPORTING AND ADMINISTRATIVE FEE REQUIREMENT**

Refer to Terms and Conditions for NASPO ValuePoint usage reporting and administrative fee requirements. Some States may require additional usage reporting and administrative fee be paid directly to the State only on purchases made by Purchasing Entities within that State. For all such requests, the fee level, payment method and schedule for such reports and payments

will be incorporated into the Participating Addendum that is made part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the State.

## 2.12 GLOSSARY

**Authorized Representative:** An individual with the authority to legally bind the Offeror to the Terms and Conditions of the Master Agreement (s) established as a result of this RFP. This individual must have the authority and ability to accurately reflect the ability of the Offeror to meet the requirements detailed in this RFP.

**Contract Administrator:** A dedicated person with the authority and ability to manage compliance with the scope and Terms and Conditions for this contract.

**Contracted Supplier or Contractor or Contracted OEM Supplier:** An Original Equipment Manufacturer (OEM) of the offered Data Communications products that has been awarded a Master Agreement as a result of this procurement.

**Lead State:** The State issuing the Request for Proposal, in this case, Utah.

**Mandatory Minimum Requirements:** Requirements that must be met in order to be considered for further evaluation. Mandatory minimum requirements are non-negotiable. An offer that does not meet the mandatory minimum requirements will be disqualified from further consideration.

**Master Agreement:** The underlying agreement executed by and between the Lead State, acting on behalf of NASPO ValuePoint and the Contractor, as now or hereafter amended.

**NASPO ValuePoint:** Unified, nationally focused cooperative allegiance aggregating the demand of all 50 states, the District of Columbia and the organized US territories, their political subdivisions and other eligible entities, spurring best innovation and competition in the marketplace. See <http://www.naspovaluepoint.com/> for more information.

**OEM:** Original Equipment Manufacturer of the data communications products and services.

**Participating Addendum:** A Participating Addendum must be executed by any State that decides to adopt a NASPO ValuePoint Master Agreement. A Participating Addendum must be executed for each Contractor by the individual State desiring to use their contract. Additional States may be added with the consent of the Contractor and the Lead State (on behalf of NASPO ValuePoint) through execution of Participating Addendums. A Participating Addendum allows for each Participating State to add Terms and Conditions that may be unique to their State.

The Participating State and the Contractor must negotiate and agree upon any additional Terms and Conditions prior to the signing and execution of the Participating Addendum. States are not mandated to sign a Participating Addendum with all awarded vendors.

**Participating Entity:** A state, or other legal entity, properly authorized to enter into a Participating Addendum. See Attachment A.

**Price Guarantee Period:** One (1) Year.

**Published Commercial Price List:** Manufacturer's Price list, also known as the list price.

**Purchasing Entity:** A state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Qualified Entity:** An entity that is eligible to use the Master Agreement(s).

**Usage Report Administrator:** A person responsible for the quarterly sales reporting and payments described in this RFP.

## SECTION 3: EVALUATION AND AWARD

### 3.1 PROPOSAL EVALUATION

All proposals in response to this RFP will be evaluated in a manner consistent with the Utah Procurement Code, Administrative Rules, policies and the evaluation criteria in this RFP. Offerors bear sole responsibility for the items included or not included within the submitted proposal. Each area of the evaluation criteria must be addressed in detail in the proposal. Each product category will be awarded separately. Offeror's may respond to one or any of the product categories.

The Lead State reserves the right to verify that Offeror's proposal meets the required mandatory minimums and technical requirements.

### 3.2 PROPOSAL EVALUATION PROCESS

#### Stage 1: Initial Review

In the initial phase of the evaluation process, the Lead State will review all proposals timely received. The mandatory minimum requirements are provided in Section 4.1, and will be scored on a pass/fail basis. A "Fail" on any one criteria will result in a proposal being deemed non-responsive. Failure to provide a response to each Mandatory requirement will result in disqualification. These requirements are summarized below.

<u>Mandatory Minimum Requirements</u>	<u>RFP Section</u>	<u>Pass/Fail</u>
RFP Development	4.1.1	Pass/Fail
Evaluation of Proposals	4.1.2	Pass/Fail
Proposed Categories	4.1.3	Pass/Fail
Delivery	4.1.4	Pass/Fail
Credit Rating	4.1.5	Pass/Fail
OEMs Only	4.1.6	Pass/Fail

Non-responsive proposals not conforming to the RFP requirements or unable to meet the mandatory minimum requirements will be eliminated from further consideration. Offerors that meet all minimum requirements will move on to the Stage 2 evaluation.

#### Stage 2: OEM Evaluated Qualifications

Responsive proposals will be evaluated by an evaluation committee appointed by the Lead State against the criteria described in Section 4.2 OEM Evaluated Qualifications.

The listed criteria in Section 4.2 are weighted as follows:

<u>Evaluation Criteria</u>	<u>RFP Section</u>	<u>Points Possible</u>
Company Profile and References	4.2.1	50.0
Ability to Supply NASPO ValuePoint Member States	4.2.2	50.0
Ability to Provide Technical Support to End Users	4.2.3	50.0
Qualifications and Technical Ability	4.2.4	25.0
Security	4.2.5	50.0
Environmental	4.2.6	25.0
<i>Total Stage 2 Points</i>		<i>250.0 points</i>

The evaluation committee will tally the final scores for the OEM Evaluated Qualifications criteria to arrive at a consensus score by averaging the individual scores. Offerors that achieve the **minimum score threshold of 162.5 points within the Stage 2** evaluation will proceed to the

Stage 3 Category Qualification Evaluation. Offeror's who do not achieve the required minimum score threshold will be disqualified and eliminated from further consideration.

### **Stage 3: Category Qualification Evaluation**

Responsive proposals that meet the minimum score threshold from Stage 2 will then be evaluated for responsiveness in each Category that Offeror is seeking an award in.

The listed criteria in Section 4.3 are weighted as follows:

<u>Evaluation Criteria</u>	<u>RFP Section</u>	<u>Points Possible</u>
Ability to meet Requirements of Selected Category	4.3.1	100.0
Consumption Models	4.3.2	25.0
Category Specific Security	4.3.3	50.0
Open Standards and Interoperability	4.3.4	50.0
Value Added Services	4.3.5	25.0
<i>Total Stage 3 Points Per Category</i>		<i>250.0 points</i>

The total possible points and the minimum score threshold that must be achieved for each Category that Offeror is seeking an award in are as follows:

<b>Award Categories</b>	<b>Total Points Possible</b>	<b>Stage 3: Minimum Threshold</b>
Unified Communications	250.0	175.0
Networking	250.0	175.0
Routers, Switches, Security, and Storage Networking	250.0	175.0
Wireless	250.0	175.0
Facility Management, Monitoring, and Control	250.0	175.0

The evaluation committee will tally the final scores for in each Category to arrive at a consensus score by averaging the individual evaluator scores.

Proposals that achieve the minimum score threshold listed above for a given Award Category will proceed to the Final Stage: Cost Proposal Evaluation. Offerors with a score of less than the minimum required technical points (Minimum Threshold) will be deemed non-responsive and ineligible for further consideration.

The evaluation score sheet has been attached to this RFP (Attachment F) for reference. This provided scoresheet states the relative weight for each evaluation criteria.

### **Final Stage: Cost Proposal Evaluation**

Offerors successful in the Stage 3 Product Qualification Evaluation will advance to the Final Stage: Cost Proposal Evaluation. At this stage, the Lead State will then separate all responsive proposals into the following groups:

- Group 1: those Offerors whose proposal qualifies for all Award Categories.
- Group 2: those Offerors whose proposal qualifies one or more Award Categories, but not all Award Categories.

The Minimum Discount % off within Group 1 proposals will be compared against the Group 1 proposals. The Minimum Discount % off within Group 2 proposals will be compared against the

Group 2 proposals.

**Group 1** – Within Group 1, the Offeror with the highest proposed Average Minimum Discount % off List for all Award Categories (See Attachment E) will receive 166.7 cost points. All other Offerors within Group 1 will receive a percentage of the cost points possible based on the percentage by which their proposed discount % is lower than the highest discount % in the given category. The formula to compute cost points is: **(Proposed Average Discount % / Highest Average Minimum Discount %) \* Total Cost Points Available.**

**Group 2** – Within Group 2, the Offeror with the highest proposed Minimum Discount % off List for the given Award Category 166.7 cost points. All other Offerors within Group 2 will receive a percentage of the cost points possible based on the percentage by which their proposed discount % is lower than the highest discount % in the given category. The formula to compute cost points is: **(Proposed Minimum Discount % / Highest Minimum Discount %) \* Total Cost Points Available.**

Refer to Section 5 below and Attachment E for additional information pertaining to the cost evaluation.

### 3.3 AWARD OF MASTER AGREEMENT(S)

In order to be eligible for a contract award under this RFP a proposal must have a combined total score, of OEM, technical points, and cost points meeting the minimum threshold for award for the given Category as provided below:

Product Category	Total Possible Technical Points*	Total Possible Cost Points	Grand Total Possible Points	Minimum Threshold for Award
Unified Communications	500.0	166.7	666.7	466.69
Networking	500.0	166.7	666.7	466.69
Routers, Switches, Security, and Storage Networking	500.0	166.7	666.7	466.69
Wireless	500.0	166.7	666.7	466.69
Facility Management, Monitoring, and Control	500.0	166.7	666.7	466.69

*\*Technical Points is a combination of Stage 2 and Stage 3 Technical Points.*

All Offerors whose proposals meet or exceed this minimum threshold for award in a given Category are determined to provide the best value. After final selections are made, the Lead State will issue an intent-to-award announcement by letter to all responsive Offerors.

### 3.4 PROTEST PROCESS

Offerors are directed to Utah Code Part 16 and Utah Administrative Code Rule R16 available at <http://le.utah.gov/xcode/Title63G/Chapter6a/63G-6a-S1601.html> and <http://www.rules.utah.gov/publicat/code/r033/r033-016.htm> for available protest processes.

### 3.5 PUBLICIZING AWARD(S)

The Lead State shall, on the next business day after the award of a contract(s) is announced,



make available to each Offeror and to the public a written justification statement that includes:

- (a) the name of the offeror to which the contract is awarded and the total score awarded by the evaluation committee to that offeror;
- (b) the justification statement under UCA § 63G-6a-708, including any required cost-benefit analysis; and
- (c) the total score awarded by the evaluation committee to each offeror to which the contract is not awarded, without identifying which offeror received which score.

## SECTION 4: ADMINISTRATIVE AND TECHNICAL RESPONSE REQUIREMENTS

### 4.1 Mandatory Minimum Requirements

This section contains mandatory minimum requirements that must be met in order for an offer to be considered responsive.

Failure to meet any one of the mandatory requirements/qualifications will result in the proposal being rejected pursuant to UCA § 63G-6a-704 and the proposal will not move forward in the evaluation process. All of the items described in this section are non-negotiable. A rejection of a proposal due to a proposal not meeting mandatory minimum requirements can occur at any time that the non-compliance is discovered.

**4.1.1 RFP Development.** Did your company, an employee, agent, or representative of your company, or any affiliated entity participate in developing any component of this solicitation? For purposes of this question, business concerns, organizations, or individuals are affiliates of each other if, directly or indirectly: (1) either one controls or has power to control the other or (2) a third party controls or has the power to control both. Indicia of control include, but are not limited to, interlocking management or ownership, identity of interests among family members, shared facilities or equipment, and common use of employees. A response of other than “no” is subject to disqualification.

**4.1.2 Evaluation of Proposals.** Will your company, or an employee, agent, or representative of your company, participate in the evaluation of the proposals received in response to this RFP? A response of other than “no” is subject to disqualification.

**4.1.3 Proposed Categories.** Identify all categories your firm is seeking an award in from the following:

1. Unified Communications
2. Networking
3. Routers, Switches, Security, and Storage Networking
4. Wireless
5. Facility Management, Monitoring, and Control

**4.1.4 Delivery.** The extended prices are the delivered price to any Purchasing Entity. The extended price must reflect the minimum discount % off list price, as well as the price to deliver the item/services to the Purchasing Entity. See Attachment A section 14 for the required shipping and delivery. Offeror shall affirm its' acknowledgement of this requirement.

**4.1.5 Credit Rating.** Vendor must meet a minimum Dun and Bradstreet (D&B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&B Number and score for the parent company that will be financially responsible for performance of the agreement.

**4.1.6 OEMs Only.** Master Agreements will only be established with qualified Original Equipment Manufacturers (OEM's) resulting from this Data Communication's Products and Services RFP. Offeror must affirm its acknowledgement of this requirement, and that it is the OEM of all proposed solutions, hardware, services, etc. within its proposal.

## **4.2 OEM EVALUATED QUALIFICATIONS**

Offeror's who meet all mandatory minimum requirements outlined above will then be evaluated on the qualifications detailed in Attachment B.1.

- 4.2.1 Company Profile and References
- 4.2.2 Ability to Supply NASPO ValuePoint Member States
- 4.2.3 Ability to Provide Technical Support to End Users
- 4.2.4 Qualifications and Technical Ability
- 4.2.5 Security
- 4.2.6 Environmental

All Offerors are required to complete and submit a point by point response to the items detailed in Attachment B.1, in the format provided in Attachment B.1.

## **4.3 CATEGORY QUALIFICATIONS**

Offerors who meet all mandatory minimum requirements from section 4.1, and the required score thresholds for the criteria outlined in section 4.2, will then be evaluated on the following items for EACH category Offeror is seeking an award. Non-responsive proposals not conforming to RFP or unable to meet the Stage 2 required thresholds will be disqualified and eliminated from further consideration. All Offerors are required to complete and submit a point by point response to the following items detailed in Attachment B.2 **for each category Offeror is seeking an award (i.e., if Offeror is seeking qualification in Categories 1.1 and 1.2, then Offeror must complete Attachment B.2 twice, once for each category Offeror is seeking an award):**

- 4.3.1 Ability to meet Scope/Service Requirements of Selected Category
- 4.3.2 Consumption Models
- 4.3.3 Category Specific Security
- 4.3.4 Open Standards and Interoperability
- 4.3.5 Value Added Services

## **SECTION 5: COST INFORMATION AND COST PROPOSAL**

### **5.1 PRICE GUARANTEE PERIOD**

All pricing must be guaranteed as provided within Attachment A section 11. Price increases or decreases during the contract term will be resolved pursuant to Attachment A section 11.

### **5.2 PRODUCT LINE ADDITIONS AND FULFILLMENT PARTNER UPDATES**

During the term of the contract, Data Communications Providers may submit a request to update the awarded items (within the scope listed in Attachment B) as new technology is introduced, updated or removed from the market. The Master Agreement Administrator will evaluate requests and update the contract offering as appropriate. The Data Communications Service Provider shall update the dedicated website, price lists, and catalogs to reflect approved changes. Pricing must utilize the same pricing structure as was used for services falling into the same service category.

The process for adding or removing a fulfillment partner at the State level may be negotiated and described in the Participating Addendum. Each participating State may determine, negotiate with the contractor, and describe the process in the Participating Addendum. Contractors shall follow the process described in the Participating Addendum for each State when adding or removing a fulfillment partner per State.

### **5.3 COST PROPOSAL**

Given that technology products generally depreciate over time and go through typical product lifecycles, it is more favorable for Purchasing Entities to have the Master Agreement be based on minimum discounts off the Offeror's commercially published pricelists versus fixed pricing. (Orders, however, will be fixed-price or fixed-rate and not cost reimbursable contracts.) In addition, Offerors will have the ability to update and refresh their respective price catalog, as long as the agreed-upon discounts are fixed, subject to prior approval by the Lead State.

Offeror must identify its offered Minimum Discount % off List within Attachment E.

The Minimum Discount % off List shall be firm fixed for the duration of the contract. However, the list prices may fluctuate through the life of the contract, as provided herein this Section 5. Offeror may offer increased discounts upon achievement of contract volume milestones. Minimum guaranteed contract discounts do not preclude an Offeror and/or its authorized resellers from providing deeper or additional, incremental discounts at their sole discretion. Purchasing entities shall benefit from any promotional pricing offered by the Contractor to similar customers. Promotional pricing shall not be cause for a permanent price change.

An Offeror's price catalog should be clear and readable. All firms awarded a particular Category will be awarded their entire product line within the scope of the product category. Participating Entities, in reviewing an Offeror's Master Agreement, will take into account the discount offered by the Offeror along with the transparent, publicly available, up-to-date pricing and tools that will allow customers to evaluate their pricing.

Individual Participating Addendums may use a vendor's proposed minimum discount percentage off (Attachment E), and offered catalog, as a base and may elect to negotiate an adjusted (i.e., greater) minimum discount percentage off.

Value Added Services. Some Participating Entities may desire to use an Offeror for other related application modifications to optimize or deploy hardware and service applications. Responses to the RFP must include hourly rates by job specialty for use by Participating Entities for these types

of database/application administration, systems engineering & configuration services and consulting throughout the contract period. The hourly rates should be a fully burdened rate that includes labor, overhead, and any other costs related to the service. The specific rate (within a range) charged for each proposed contracted service would be the lowest rate shown unless justified in writing and approved by the Lead State. Any of these valued-added services must be included in your cost proposal, e.g., by an hourly rate.



## **Attachment A: NASPO ValuePoint Master Agreement Terms and Conditions**

### **1. Master Agreement Order of Precedence**

a. Any Order placed under this Master Agreement shall consist of the following documents:

- (1) A Participating Entity's Participating Addendum ("PA");
- (2) NASPO ValuePoint Master Agreement Terms & Conditions;
- (3) A Purchase Order issued against the Master Agreement, including a Service Level Agreement;
- (4) The Solicitation; and
- (5) Contractor's response to the Solicitation, as revised (if permitted) and accepted by the Lead State.

b. These documents shall be read to be consistent and complementary. Any conflict among these documents shall be resolved by giving priority to these documents in the order listed above. Contractor terms and conditions that apply to this Master Agreement are only those that are expressly accepted by the Lead State and must be in writing and attached to this Master Agreement as an Exhibit or Attachment.

**2. Definitions** - Unless otherwise provided in this Master Agreement, capitalized terms will have the meanings given to those terms in this Section.

**Acceptance** is defined by the applicable commercial code, except Acceptance shall not occur before the completion of delivery in accordance with the Order, installation if required, and a reasonable time for inspection of the Product.

**Contractor** means the person or entity delivering Products or performing services under the terms and conditions set forth in this Master Agreement.

**Data** means all information, whether in oral or written (including electronic) form, created by or in any way originating with a Participating Entity or Purchasing Entity, and all information that is the output of any computer processing, or other electronic manipulation, of any information that was created by or in any way originating with a Participating Entity or Purchasing Entity, in the course of using and configuring the Services provided under this Agreement.

**Data Breach** means any actual or reasonably suspected non-authorized access to or acquisition of computerized Non-Public Data or Personal Data that compromises the security, confidentiality, or integrity of the Non-Public Data or Personal Data, or the

ability of Purchasing Entity to access the Non-Public Data or Personal Data.

**Disabling Code** means computer instructions or programs, subroutines, code, instructions, data or functions, (including but not limited to viruses, worms, date bombs or time bombs), including but not limited to other programs, data storage, computer libraries and programs that self-replicate without manual intervention, instructions programmed to activate at a predetermined time or upon a specified event, and/or programs purporting to do a meaningful function but designed for a different function, that alter, destroy, inhibit, damage, interrupt, interfere with or hinder the operation of the Purchasing Entity's software, applications and/or its end users processing environment, the system in which it resides, or any other software or data on such system or any other system with which it is capable of communicating.

**Embedded Software** means one or more software applications which permanently reside on a computing device.

**Fulfillment Partner** means a third-party contractor qualified and authorized by Contractor, and approved by the Participating State under a Participating Addendum, who may, to the extent authorized by Contractor, fulfill any of the requirements of this Master Agreement including but not limited to providing Services under this Master Agreement and billing Customers directly for such Services. Contractor may, upon written notice to the Participating State, add or delete authorized Fulfillment Partners as necessary at any time during the contract term. Fulfillment Partner has no authority to amend this Master Agreement or to bind Contractor to any additional terms and conditions.

**Intellectual Property** means any and all patents, copyrights, service marks, trademarks, trade secrets, trade names, patentable inventions, or other similar proprietary rights, in tangible or intangible form, and all rights, title, and interest therein.

**Lead State** means the State centrally administering any resulting Master Agreement(s).

**Master Agreement** means the underlying agreement executed by and between the Lead State, acting on behalf of the NASPO ValuePoint program, and the Contractor, as now or hereafter amended.

**NASPO ValuePoint** is the NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, a 501(c)(3) limited liability company that is a subsidiary organization the National Association of State Procurement Officials (NASPO), the sole member of NASPO ValuePoint. NASPO ValuePoint facilitates administration of the NASPO cooperative group contracting consortium of state chief procurement officials for the benefit of state departments, institutions, agencies, and political subdivisions and other eligible entities (i.e., colleges, school districts, counties, cities, some nonprofit organizations, etc.) for all states, the District of Columbia, and territories of the United States. NASPO ValuePoint is identified in the Master Agreement as the recipient of reports and may perform contract administration functions relating to collecting and

receiving reports as well as other contract administration functions as assigned by the Lead State.

**Order or Purchase Order** means any purchase order, sales order, contract or other document used by a Purchasing Entity to order the Products.

**Participating Addendum** means a bilateral agreement executed by a Contractor and a Participating Entity incorporating this Master Agreement and any other additional Participating Entity specific language or other requirements, e.g. ordering procedures specific to the Participating Entity, other terms and conditions.

**Participating Entity** means a state, or other legal entity, properly authorized to enter into a Participating Addendum.

**Participating State** means a state, the District of Columbia, or one of the territories of the United States that is listed in the Request for Proposal as intending to participate. Upon execution of the Participating Addendum, a Participating State becomes a Participating Entity; however, a Participating State listed in the Request for Proposal is not required to participate through execution of a Participating Addendum.

**Personal Data** means data alone or in combination that includes information relating to an individual that identifies the individual by name, identifying number, mark or description can be readily associated with a particular individual and which is not a public record. Personal Information may include the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information, including account number, credit or debit card numbers; or Protected Health Information (PHI) relating to a person.

**Product** means any equipment, software (including embedded software), documentation, service or other deliverable supplied or created by the Contractor pursuant to this Master Agreement. The term Products, supplies and services, and products and services are used interchangeably in these terms and conditions.

**Purchasing Entity** means a state (as well as the District of Columbia and U.S territories), city, county, district, other political subdivision of a State, and a nonprofit organization under the laws of some states if authorized by a Participating Addendum, that issues a Purchase Order against the Master Agreement and becomes financially committed to the purchase.

**Services** mean any of the specifications described in the Scope of Services that are supplied or created by the Contractor pursuant to this Master Agreement.

**Security Incident** means the possible or actual unauthorized access to a Purchasing Entity's Non-Public Data and Personal Data the Contractor believes could reasonably result in the use, disclosure or theft of a Purchasing Entity's Non-Public Data within the possession or control of the Contractor. A Security Incident also includes a major



security breach to the Contractor's system, regardless if Contractor is aware of unauthorized access to a Purchasing Entity's Non-Public Data. A Security Incident may or may not turn into a Data Breach.

**Service Level Agreement (SLA)** means a written agreement between both the Purchasing Entity and the Contractor that is subject to the terms and conditions in this Master Agreement and relevant Participating Addendum unless otherwise expressly agreed in writing between the Purchasing Entity and the Contractor. SLAs should include: (1) the technical service level performance promises, (i.e. metrics for performance and intervals for measure), (2) description of service quality, (3) identification of roles and responsibilities, (4) remedies, such as credits, and (5) an explanation of how remedies or credits are calculated and issued.

**Solicitation** means the documents used by the State of Utah, as the Lead State, to obtain Contractor's Proposal.

**Statement of Work** means a written statement in a solicitation document or contract that describes the Purchasing Entity's service needs and expectations.

## **NASPO ValuePoint Program Provisions**

### **3. Term of the Master Agreement**

a. The initial term of this Master Agreement is for five (5) years. This Master Agreement may be extended beyond the original contract period for two (2) additional years at the Lead State's discretion and by mutual agreement and upon review of requirements of Participating Entities, current market conditions, and Contractor performance.

b. The Master Agreement may be extended for a reasonable period of time, not to exceed six months, if in the judgment of the Lead State a follow-on, competitive procurement will be unavoidably delayed (despite good faith efforts) beyond the planned date of execution of the follow-on master agreement. This subsection shall not be deemed to limit the authority of a Lead State under its state law otherwise to negotiate contract extensions.

### **4. Amendments**

The terms of this Master Agreement shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written agreement of the Lead State and Contractor.

### **5. Participants and Scope**

a. Contractor may not deliver Products under this Master Agreement until a Participating Addendum acceptable to the Participating Entity and Contractor is executed. The NASPO ValuePoint Master Agreement Terms and Conditions are applicable to any Order by a Participating Entity (and other Purchasing Entities covered by their Participating Addendum), except to the extent altered, modified, supplemented or

amended by a Participating Addendum. By way of illustration and not limitation, this authority may apply to unique delivery and invoicing requirements, confidentiality requirements, defaults on Orders, governing law and venue relating to Orders by a Participating Entity, indemnification, and insurance requirements. Statutory or constitutional requirements relating to availability of funds may require specific language in some Participating Addenda in order to comply with applicable law. The expectation is that these alterations, modifications, supplements, or amendments will be addressed in the Participating Addendum or, with the consent of the Purchasing Entity and Contractor, may be included in the ordering document (e.g. purchase order or contract) used by the Purchasing Entity to place the Order.

b. Use of specific NASPO ValuePoint cooperative Master Agreements by state agencies, political subdivisions and other Participating Entities (including cooperatives) authorized by individual state's statutes to use state contracts are subject to the approval of the respective State Chief Procurement Official. Issues of interpretation and eligibility for participation are solely within the authority of the respective State Chief Procurement Official.

c. Obligations under this Master Agreement are limited to those Participating Entities who have signed a Participating Addendum and Purchasing Entities within the scope of those Participating Addenda. States or other entities permitted to participate may use an informal competitive process to determine which Master Agreements to participate in through execution of a Participating Addendum. Financial obligations of Participating Entities who are states are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating Entities who are states incur no financial obligations on behalf of other Purchasing Entities. Contractor shall email a fully executed PDF copy of each Participating Addendum to [PA@naspovaluepoint.org](mailto:PA@naspovaluepoint.org) to support documentation of participation and posting in appropriate data bases.

d. NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint, is not a party to the Master Agreement. It is a nonprofit cooperative purchasing organization assisting states in administering the NASPO cooperative purchasing program for state government departments, institutions, agencies and political subdivisions (e.g., colleges, school districts, counties, cities, etc.) for all 50 states, the District of Columbia and the territories of the United States.

e. Participating Addenda shall not be construed to amend the following provisions in this Master Agreement between the Lead State and Contractor that prescribe NASPO ValuePoint Program requirements: Term of the Master Agreement; Amendments; Participants and Scope; Administrative Fee; NASPO ValuePoint Summary and Detailed Usage Reports; NASPO ValuePoint Cooperative Program Marketing and Performance Review; NASPO ValuePoint eMarketCenter; Right to Publish; Price and Rate Guarantee Period; and Individual Customers. Any such language shall be void and of no effect.

f. Participating Entities who are not states may under some circumstances sign their own Participating Addendum, subject to the consent to participation by the Chief Procurement Official of the state where the Participating Entity is located. Coordinate requests for such participation through NASPO ValuePoint. Any permission to participate through execution of a Participating Addendum is not a determination that procurement authority exists in the Participating Entity; they must ensure that they have the requisite procurement authority to execute a Participating Addendum.

g. **Resale.** “Resale” means any payment in exchange for transfer of tangible goods, software, or assignment of the right to services. Subject to any specific conditions included in the solicitation or Contractor’s proposal as accepted by the Lead State, or as explicitly permitted in a Participating Addendum, Purchasing Entities may not resell Products (the definition of which includes services that are deliverables). Absent any such condition or explicit permission, this limitation does not prohibit: payments by employees of a Purchasing Entity for Products; sales of Products to the general public as surplus property; and fees associated with inventory transactions with other governmental or nonprofit entities and consistent with a Purchasing Entity’s laws and regulations. Any sale or transfer permitted by this subsection must be consistent with license rights granted for use of intellectual property.

## **6. Administrative Fees**

a. The Contractor shall pay to NASPO ValuePoint, or its assignee, a NASPO ValuePoint Administrative Fee of one-quarter of one percent (0.25% or 0.0025) no later than sixty (60) days following the end of each calendar quarter. The NASPO ValuePoint Administrative Fee shall be submitted quarterly and is based on all sales of products and services under the Master Agreement (less any charges for taxes or shipping). The NASPO ValuePoint Administrative Fee is not negotiable. This fee is to be included as part of the pricing submitted with proposal.

b. Additionally, some states may require an additional fee be paid directly to the state only on purchases made by Purchasing Entities within that state. For all such requests, the fee level, payment method and schedule for such reports and payments will be incorporated into the Participating Addendum that is made a part of the Master Agreement. The Contractor may adjust the Master Agreement pricing accordingly for purchases made by Purchasing Entities within the jurisdiction of the state. All such agreements shall not affect the NASPO ValuePoint Administrative Fee percentage or the prices paid by the Purchasing Entities outside the jurisdiction of the state requesting the additional fee. The NASPO ValuePoint Administrative Fee in subsection 6a shall be based on the gross amount of all sales (less any charges for taxes or shipping) at the adjusted prices (if any) in Participating Addenda.

## **7. NASPO ValuePoint Summary and Detailed Usage Reports**

In addition to other reports that may be required by this solicitation, the Contractor shall provide the following NASPO ValuePoint reports.

a. **Summary Sales Data.** The Contractor shall submit quarterly sales reports directly to

NASPO ValuePoint using the NASPO ValuePoint Quarterly Sales/Administrative Fee Reporting Tool found at <http://calculator.naspovaluepoint.org>. Any/all sales made under this Master Agreement shall be reported as cumulative totals by state. Even if Contractor experiences zero sales during a calendar quarter, a report is still required. Reports shall be due no later than thirty (30) days following the end of the calendar quarter (as specified in the reporting tool).

b. Detailed Sales Data. Contractor shall also report detailed sales data by: (1) state; (2) entity/customer type, e.g. local government, higher education, K12, non-profit; (3) Purchasing Entity name; (4) Purchasing Entity bill-to and ship-to locations; (4) Purchasing Entity and Contractor Purchase Order identifier/number(s); (5) Purchase Order Type (e.g. sales order, credit, return, upgrade, determined by industry practices); (6) Purchase Order date; (7) Ship Date; (8) and line item description, including product number if used. The report shall be submitted in any form required by the solicitation. Reports are due on a quarterly basis and must be received by the Lead State and NASPO ValuePoint Cooperative Development Team no later than thirty (30) days after the end of the reporting period. Reports shall be delivered to the Lead State and to the NASPO ValuePoint Cooperative Development Team electronically through a designated portal, email, CD-ROM, flash drive or other method as determined by the Lead State and NASPO ValuePoint. Detailed sales data reports shall include sales information for all sales under Participating Addenda executed under this Master Agreement. The format for the detailed sales data report is in shown in Attachment H.

c. Reportable sales for the summary sales data report and detailed sales data report includes sales to employees for personal use where authorized by the solicitation and the Participating Addendum. Report data for employees should be limited to ONLY the state and entity they are participating under the authority of (state and agency, city, county, school district, etc.) and the amount of sales. No personal identification numbers, e.g. names, addresses, **social security numbers or any other numerical identifier**, may be submitted with any report.

d. Contractor shall provide the NASPO ValuePoint Cooperative Development Coordinator with an executive summary each quarter that includes, at a minimum, a list of states with an active Participating Addendum, states that Contractor is in negotiations with and any Participating Addendum roll out or implementation activities and issues. NASPO ValuePoint Cooperative Development Coordinator and Contractor will determine the format and content of the executive summary. The executive summary is due thirty (30) days after the conclusion of each calendar quarter.

e. Timely submission of these reports is a material requirement of the Master Agreement. The recipient of the reports shall have exclusive ownership of the media containing the reports. The Lead State and NASPO ValuePoint shall have a perpetual, irrevocable, non-exclusive, royalty free, transferable right to display, modify, copy, and otherwise use reports, data and information provided under this section.

## **8. NASPO ValuePoint Cooperative Program Marketing, Training, and Performance Review**

- a. Contractor agrees to work cooperatively with NASPO ValuePoint personnel. Contractor agrees to present plans to NASPO ValuePoint for the education of Contractor's contract administrator(s) and sales/marketing workforce regarding the Master Agreement contract, including the competitive nature of NASPO ValuePoint procurements, the Master agreement and participating addendum process, and the manner in which qualifying entities can participate in the Master Agreement.
- b. Contractor agrees, as Participating Addendums become executed, if requested by ValuePoint personnel to provide plans to launch the program within the participating state. Plans will include time frames to launch the agreement and confirmation that the Contractor's website has been updated to properly reflect the contract offer as available in the participating state.
- c. Contractor agrees, absent anything to the contrary outlined in a Participating Addendum, to consider customer proposed terms and conditions, as deemed important to the customer, for possible inclusion into the customer agreement. Contractor will ensure that their sales force is aware of this contracting option.
- d. Contractor agrees to participate in an annual contract performance review at a location selected by the Lead State and NASPO ValuePoint, which may include a discussion of marketing action plans, target strategies, marketing materials, as well as Contractor reporting and timeliness of payment of administration fees.
- e. Contractor acknowledges that the NASPO ValuePoint logos may not be used by Contractor in sales and marketing until a logo use agreement is executed with NASPO ValuePoint.
- f. The Lead State expects to evaluate the utilization of the Master Agreement at the annual performance review. Lead State may, in its discretion, terminate the Master Agreement pursuant to section 28, or not exercise an option to renew, when Contractor utilization does not warrant further administration of the Master Agreement. The Lead State may exercise its right to not renew the Master Agreement if vendor fails to record or report revenue for three consecutive quarters, upon 60-calendar day written notice to the Contractor. Termination based on nonuse or under-utilization will not occur sooner than two years after award (or execution if later) of the Master Agreement. This subsection does not limit the discretionary right of either the Lead State or Contractor to terminate the Master Agreement pursuant to section 28 or to terminate for default pursuant to section 30.
- g. Contractor agrees, within 30 days of their effective date, to notify the Lead State and NASPO ValuePoint of any contractual most-favored-customer provisions in third-part contracts or agreements that may affect the promotion of this Master Agreements or whose terms provide for adjustments to future rates or pricing based on rates, pricing in,

or Orders from this master agreement. Upon request of the Lead State or NASPO ValuePoint, Contractor shall provide a copy of any such provisions.

## **9. NASPO ValuePoint eMarket Center**

a. In July 2011, NASPO ValuePoint entered into a multi-year agreement with SciQuest, Inc. (doing business as JAGGAER) whereby JAGGAER will provide certain electronic catalog hosting and management services to enable eligible NASPO ValuePoint's customers to access a central online website to view and/or shop the goods and services available from existing NASPO ValuePoint Cooperative Contracts. The central online website is referred to as the NASPO ValuePoint eMarket Center.

b. The Contractor will have visibility in the eMarket Center through Ordering Instructions. These Ordering Instructions are available at no cost to the Contractor and provide customers information regarding the Contractors website and ordering information. The Contractor is required at a minimum to participate in the eMarket Center through Ordering Instructions.

c. At a minimum, the Contractor agrees to the following timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin Ordering Instruction process. The Contractor shall have thirty (30) days from receipt of written request to work with NASPO ValuePoint to provide any unique information and ordering instructions that the Contractor would like the customer to have.

d. If the solicitation requires either a catalog hosted on or integration of a punchout site with eMarket Center, or either solution is proposed by a Contractor and accepted by the Lead State, the provisions of the eMarket Center Appendix to these NASPO ValuePoint Master Agreement Terms and Conditions apply.

## **10. Right to Publish**

Throughout the duration of this Master Agreement, Contractor must secure from the Lead State prior approval for the release of information that pertains to the potential work or activities covered by the Master Agreement. This limitation does not preclude publication about the award of the Master Agreement or marketing activities consistent with any proposed and accepted marketing plan. The Contractor shall not make any representations of NASPO ValuePoint's opinion or position as to the quality or effectiveness of the services that are the subject of this Master Agreement without prior written consent. Failure to adhere to this requirement may result in termination of the Master Agreement for cause.

## **11. Price and Rate Guarantee Period**

All pricing must be guaranteed for the first year of the Master Agreement.

Following the guarantee period, any request for price increases must be for an equal guarantee period (1 year), and must be submitted to the Lead State at least thirty (30) calendar days prior to the effective date. The Lead State will review a documented request for an MSRP price list increase only after the Price Guarantee Period.

Requests for price increases must include sufficient documentation supporting the request and demonstrating a reasonableness of the adjustment when comparing the current price list to the proposed price list. Documentation may include: the manufacturers national price increase announcement letter, a complete and detailed description of what products are increasing and by what percentage, a complete and detailed description of what raw materials and/or other costs have increased and provide proof of increase, index data and other information to support and justify the increase. The price increase must not produce a higher profit margin than the original contract, and must be accompanied by sufficient documentation and nationwide notice of price adjustment to the published commercial price list.

No retroactive price increases will be allowed.

Price Reductions. In the event of a price decrease in any category of product at any time during the contract in an OEM's published commercial price list, including renewal options, the Lead State shall be notified immediately. All published commercial price list price reductions shall be effective upon the notification provided to the Lead State.

## **12. Individual Customers**

Except to the extent modified by a Participating Addendum, each Purchasing Entity shall follow the terms and conditions of the Master Agreement and applicable Participating Addendum and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement, including but not limited to, any indemnity or right to recover any costs as such right is defined in the Master Agreement and applicable Participating Addendum for their purchases. Each Purchasing Entity will be responsible for its own charges, fees, and liabilities. The Contractor will apply the charges and invoice each Purchasing Entity individually.

## **Administration of Orders**

### **13. Ordering**

a. Master Agreement order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

b. Purchasing Entities may define entity or project-specific requirements and informally compete the requirement among companies having a Master Agreement on an "as needed" basis. This procedure may also be used when requirements are aggregated or other firm commitments may be made to achieve reductions in pricing. This procedure may be modified in Participating Addenda and adapted to the Purchasing Entity's rules and policies. The Purchasing Entity may in its sole discretion determine which Master Agreement Contractors should be solicited for a quote. The Purchasing Entity may select the quote that it considers most advantageous, cost and other factors considered.

c. Each Purchasing Entity will identify and utilize its own appropriate purchasing procedure and documentation. Contractor is expected to become familiar with the Purchasing Entities' rules, policies, and procedures regarding the ordering of supplies and/or services contemplated by this Master Agreement.

d. Contractor shall not begin work without a valid Purchase Order or other appropriate commitment document under the law of the Purchasing Entity.

e. Orders may be placed consistent with the terms of this Master Agreement during the term of the Master Agreement.

f. All Orders pursuant to this Master Agreement, at a minimum, shall include:

- (1) The services or supplies being delivered;
- (2) The place and requested time of delivery;
- (3) A billing address;
- (4) The name, phone number, and address of the Purchasing Entity representative;
- (5) The price per hour or other pricing elements consistent with this Master Agreement and the contractor's proposal;
- (6) A ceiling amount of the order for services being ordered; and
- (7) The Master Agreement identifier.

g. All communications concerning administration of Orders placed shall be furnished solely to the authorized purchasing agent within the Purchasing Entity's purchasing office, or to such other individual identified in writing in the Order.

h. Orders must be placed pursuant to this Master Agreement prior to the termination date thereof, but may have a delivery date or performance period up to 120 days past the then-current termination date of this Master Agreement. Maintenance agreements may have terms as prescribed in section 27. Contractor is reminded that financial obligations of Purchasing Entities payable after the current applicable fiscal year are contingent upon agency funds for that purpose being appropriated, budgeted, and otherwise made available.

i. Notwithstanding the expiration or termination of this Master Agreement, Contractor agrees to perform in accordance with the terms of any Orders then outstanding at the time of such expiration or termination. Contractor shall not honor any Orders placed after the expiration or termination of this Master Agreement, or otherwise inconsistent with its terms. Orders from any separate indefinite quantity, task orders, or other form of indefinite delivery order arrangement priced against this Master Agreement may not be placed after the expiration or termination of this Master Agreement, notwithstanding the term of any such indefinite delivery order agreement.

#### **14. Shipping and Delivery**

a. The prices are the delivered price to any Purchasing Entity. All deliveries shall be



F.O.B. destination, freight pre-paid, with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage shall remain the Contractor's until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount, if any, will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an Order to be shipped without transportation charges that is back ordered shall be shipped without charge.

b. All deliveries will be "Inside Deliveries" as designated by a representative of the Purchasing Entity placing the Order. Inside Delivery refers to a delivery to other than a loading dock, front lobby, or reception area. Specific delivery instructions will be noted on the order form or Purchase Order. Any damage to the building interior, scratched walls, damage to the freight elevator, etc., will be the responsibility of the Contractor. If damage does occur, it is the responsibility of the Contractor to immediately notify the Purchasing Entity placing the Order.

c. All products must be delivered in the manufacturer's standard package. Costs shall include all packing and/or crating charges. Cases shall be of durable construction, good condition, properly labeled and suitable in every respect for storage and handling of contents. Each shipping carton shall be marked with the commodity, brand, quantity, item code number and the Purchasing Entity's Purchase Order number.

## **15. Laws and Regulations**

Any and all Products offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

## **16. Inspection and Acceptance**

a. Where the Master Agreement or an Order does not otherwise specify a process for inspection and Acceptance, this section governs. This section is not intended to limit rights and remedies under the applicable commercial code.

b. All Products are subject to inspection at reasonable times and places before Acceptance. Contractor shall provide right of access to the Lead State, or to any other authorized agent or official of the Lead State or other Participating or Purchasing Entity, at reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance requirements under this Master Agreement. Products that do not meet specifications may be rejected. Failure to reject upon receipt, however, does not relieve the contractor of liability for material (nonconformity that substantially impairs value) latent or hidden defects subsequently revealed when goods are put to use. Acceptance of such goods may be revoked in accordance with the provisions of the applicable commercial code, and the Contractor is liable for any resulting expense incurred by the Purchasing Entity related to the preparation and shipping of Product rejected and returned, or for which Acceptance is revoked.

c. If any services do not conform to contract requirements, the Purchasing Entity may require the Contractor to perform the services again in conformity with contract requirements, at no increase in Order amount. When defects cannot be corrected by re-performance, the Purchasing Entity may require the Contractor to take necessary action to ensure that future performance conforms to contract requirements; and reduce the contract price to reflect the reduced value of services performed.

d. The warranty period shall begin upon Acceptance.

e.

## **17. Payment**

Payment after Acceptance is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance, unless a different late payment amount is specified in a Participating Addendum, Order, or otherwise prescribed by applicable law. Payments will be remitted by mail. Payments may be made via a State or political subdivision "Purchasing Card" with no additional charge.

## **18. Warranty**

Warranty provisions govern where specified elsewhere in the documents that constitute the Master Agreement; otherwise this section governs. The Contractor warrants for a period of one year from the date of Acceptance that: (a) the Product performs according to all specific claims that the Contractor made in its response to the solicitation, (b) the Product is suitable for the ordinary purposes for which such Product is used, (c) the Product is suitable for any special purposes identified in the solicitation or for which the Purchasing Entity has relied on the Contractor's skill or judgment, (d) the Product is designed and manufactured in a commercially reasonable manner, and (e) the Product is free of defects. Upon breach of the warranty, the Contractor will repair or replace (at no charge to the Purchasing Entity) the Product whose nonconformance is discovered and made known to the Contractor. If the repaired and/or replaced Product proves to be inadequate, or fails of its essential purpose, the Contractor will refund the full amount of any payments that have been made. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity, including, without limitation, actual damages, and, as applicable and awarded under the law, to a prevailing party, reasonable attorneys' fees and costs.

## **19. Title of Product**

Upon Acceptance by the Purchasing Entity, Contractor shall convey to Purchasing Entity title to the Product free and clear of all liens, encumbrances, or other security interests. Transfer of title to the Product shall include an irrevocable and perpetual license to use any Embedded Software in the Product. If Purchasing Entity subsequently transfers title of the Product to another entity, Purchasing Entity shall have the right to transfer the license to use the Embedded Software with the transfer of Product title. A subsequent transfer of this software license shall be at no additional

cost or charge to either Purchasing Entity or Purchasing Entity's transferee.

## **20. License of Pre-Existing Intellectual Property**

Contractor grants to the Purchasing Entity a nonexclusive, perpetual, royalty-free, irrevocable, license to use, publish, translate, reproduce for Purchasing Entity's own use, transfer with any sale of tangible media or Product, perform, display, and dispose of the Intellectual Property, and its derivatives, used or delivered under this Master Agreement, but not created under it ("Pre-existing Intellectual Property"). The Contractor shall be responsible for ensuring that this license is consistent with any third party rights in the Pre-existing Intellectual Property.

**21. No Guarantee of Service Volumes:** The Contractor acknowledges and agrees that the Lead State and NASPO ValuePoint makes no representation, warranty or condition as to the nature, timing, quality, quantity or volume of business for the Services or any other products and services that the Contractor may realize from this Master Agreement, or the compensation that may be earned by the Contractor by offering the Services. The Contractor acknowledges and agrees that it has conducted its own due diligence prior to entering into this Master Agreement as to all the foregoing matters.

**22. Purchasing Entity Data:** Purchasing Entity retains full right and title to Data provided by it and any Data derived therefrom, including metadata. Contractor shall not collect, access, or use user-specific Purchasing Entity Data except as strictly necessary to provide Service to the Purchasing Entity. No information regarding Purchasing Entity's use of the Service may be disclosed, provided, rented or sold to any third party for any reason unless required by law or regulation or by an order of a court of competent jurisdiction. The obligation shall extend beyond the term of this Master Agreement in perpetuity.

Contractor shall not use any information collected in connection with this Master Agreement, including Purchasing Entity Data, for any purpose other than fulfilling its obligations under this Master Agreement.

**23. System Failure or Damage:** In the event of system failure or damage caused by Contractor or its Services, the Contractor agrees to use its best efforts to restore or assist in restoring the system to operational capacity.

**24. Title to Product:** If access to the Product requires an application program interface (API), Contractor shall convey to Purchasing Entity an irrevocable and perpetual license to use the API.

**25. Data Privacy:** The Contractor must comply with all applicable laws related to data privacy and security, including IRS Pub 1075. Prior to entering into a SLA with a Purchasing Entity, the Contractor and Purchasing Entity must cooperate and hold a meeting to determine the Data Categorization to determine what data the Contractor will hold, store, or process. The Contractor must document the Data Categorization in the SLA or Statement of Work.

## **26. Transition Assistance:**

- a. The Contractor shall reasonably cooperate with other parties in connection with all Services to be delivered under this Master Agreement, including without limitation any successor service provider to whom a Purchasing Entity's Data is transferred in connection with the termination or expiration of this Master Agreement. The Contractor shall assist a Purchasing Entity in exporting and extracting a Purchasing Entity's Data, in a format usable without the use of the Services and as agreed by a Purchasing Entity, at no additional cost to the Purchasing Entity. Any transition services requested by a Purchasing Entity involving additional knowledge transfer and support may be subject to a separate transition Statement of Work.
- b. A Purchasing Entity and the Contractor shall, when reasonable, create a Transition Plan Document identifying the transition services to be provided and including a Statement of Work if applicable.
- c. The Contractor must maintain the confidentiality and security of a Purchasing Entity's Data during the transition services and thereafter as required by the Purchasing Entity.

**27. Performance and Payment Time Frames that Exceed Contract Duration:** All maintenance or other agreements for services entered into during the duration of an SLA and whose performance and payment time frames extend beyond the duration of this Master Agreement shall remain in effect for performance and payment purposes (limited to the time frame and services established per each written agreement). No new leases, maintenance or other agreements for services may be executed after the Master Agreement has expired. For the purposes of this section, renewals of maintenance, subscriptions, and other service agreements, shall not be considered as "new."

## **General Provisions**

### **28. Insurance**

- a. Unless otherwise agreed in a Participating Addendum, Contractor shall, during the term of this Master Agreement, maintain in full force and effect, the insurance described in this section. Contractor shall acquire such insurance from an insurance carrier or carriers licensed to conduct business in each Participating Entity's state and having a rating of A-, Class VII or better, in the most recently published edition of A.M. Best's Insurance Reports. Failure to buy and maintain the required insurance may result in this Master Agreement's termination or, at a Participating Entity's option, result in termination of its Participating Addendum.
- b. Coverage shall be written on an occurrence basis. The minimum acceptable limits shall be as indicated below:

(1) Commercial General Liability covering premises operations, independent contractors, products and completed operations, blanket contractual liability, personal injury (including death), advertising liability, and property damage, with a limit of not less than \$1 million per occurrence/\$3 million general aggregate;

(2) Contractor must comply with any applicable State Workers Compensation or Employers Liability Insurance requirements.

c. Contractor shall pay premiums on all insurance policies. Contractor shall provide notice to a Participating Entity who is a state within five (5) business days after Contractor is first aware of expiration, cancellation or nonrenewal of such policy or is first aware that cancellation is threatened or expiration, nonrenewal or expiration otherwise may occur.

d. Prior to commencement of performance, Contractor shall provide to the Lead State a written endorsement to the Contractor's general liability insurance policy or other documentary evidence acceptable to the Lead State that (1) names the Participating States identified in the Request for Proposal as additional insureds, (2) provides that written notice of cancellation shall be delivered in accordance with the policy provisions, and (3) provides that the Contractor's liability insurance policy shall be primary, with any liability insurance of any Participating State as secondary and noncontributory. Unless otherwise agreed in any Participating Addendum, other state Participating Entities' rights and Contractor's obligations are the same as those specified in the first sentence of this subsection except the endorsement is provided to the applicable state.

e. Contractor shall furnish to the Lead State copies of certificates of all required insurance in a form sufficient to show required coverage within thirty (30) calendar days of the execution of this Master Agreement and prior to performing any work. Copies of renewal certificates of all required insurance shall be furnished within thirty (30) days after any renewal date to the applicable state Participating Entity. Failure to provide evidence of coverage may, at the sole option of the Lead State, or any Participating Entity, result in this Master Agreement's termination or the termination of any Participating Addendum.

f. Coverage and limits shall not limit Contractor's liability and obligations under this Master Agreement, any Participating Addendum, or any Purchase Order.

## **29. Records Administration and Audit**

a. The Contractor shall maintain books, records, documents, and other evidence pertaining to this Master Agreement and Orders placed by Purchasing Entities under it to the extent and in such detail as shall adequately reflect performance and administration of payments and fees. Contractor shall permit the Lead State, a Participating Entity, a Purchasing Entity, the federal government (including its grant awarding entities and the U.S. Comptroller General), and any other duly authorized agent of a governmental agency, to audit, inspect, examine, copy and/or transcribe Contractor's books, documents, papers and records directly pertinent to this Master

Agreement or orders placed by a Purchasing Entity under it for the purpose of making audits, examinations, excerpts, and transcriptions. This right shall survive for a period of six (6) years following termination of this Agreement or final payment for any order placed by a Purchasing Entity against this Agreement, whichever is later, or such longer period as is required by the Purchasing Entity's state statutes, to assure compliance with the terms hereof or to evaluate performance hereunder.

b. Without limiting any other remedy available to any governmental entity, the Contractor shall reimburse the applicable Lead State, Participating Entity, or Purchasing Entity for any overpayments inconsistent with the terms of the Master Agreement or Orders or underpayment of Administrative Fees found as a result of the examination of the Contractor's records.

c. The rights and obligations herein exist in addition to any quality assurance obligation in the Master Agreement requiring the Contractor to self-audit contract obligations and that permits the Lead State to review compliance with those obligations.

### **30. Confidentiality, Non-Disclosure, and Injunctive Relief**

a. Confidentiality. Contractor acknowledges that it and its employees or agents may, in the course of providing a Product under this Master Agreement, be exposed to or acquire information that is confidential to Purchasing Entity or Purchasing Entity's clients. Any and all information of any form that is marked as confidential or would by its nature be deemed confidential obtained by Contractor or its employees or agents in the performance of this Master Agreement, including, but not necessarily limited to (1) any Purchasing Entity's records, (2) personnel records, and (3) information concerning individuals, is confidential information of Purchasing Entity ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Contractor shall be treated in the same manner as the Confidential Information. Confidential Information does not include information that (1) is or becomes (other than by disclosure by Contractor) publicly known; (2) is furnished by Purchasing Entity to others without restrictions similar to those imposed by this Master Agreement; (3) is rightfully in Contractor's possession without the obligation of nondisclosure prior to the time of its disclosure under this Master Agreement; (4) is obtained from a source other than Purchasing Entity without the obligation of confidentiality, (5) is disclosed with the written consent of Purchasing Entity or; (6) is independently developed by employees, agents or subcontractors of Contractor who can be shown to have had no access to the Confidential Information.

b. Non-Disclosure. Contractor shall hold Confidential Information in confidence, using at least the industry standard of confidentiality, and shall not copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than what is necessary to the performance of Orders placed under this Master Agreement. Contractor shall advise each of its employees and agents of their obligations to keep Confidential Information confidential. Contractor shall use commercially reasonable efforts to assist Purchasing Entity in identifying and preventing

any unauthorized use or disclosure of any Confidential Information. Without limiting the generality of the foregoing, Contractor shall advise Purchasing Entity, applicable Participating Entity, and the Lead State immediately if Contractor learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Master Agreement, and Contractor shall at its expense cooperate with Purchasing Entity in seeking injunctive or other equitable relief in the name of Purchasing Entity or Contractor against any such person. Except as directed by Purchasing Entity, Contractor will not at any time during or after the term of this Master Agreement disclose, directly or indirectly, any Confidential Information to any person, except in accordance with this Master Agreement, and that upon termination of this Master Agreement or at Purchasing Entity's request, Contractor shall turn over to Purchasing Entity all documents, papers, and other matter in Contractor's possession that embody Confidential Information. Notwithstanding the foregoing, Contractor may keep one copy of such Confidential Information necessary for quality assurance, audits and evidence of the performance of this Master Agreement.

c. Injunctive Relief. Contractor acknowledges that breach of this section, including disclosure of any Confidential Information, will cause irreparable injury to Purchasing Entity that is inadequately compensable in damages. Accordingly, Purchasing Entity may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Contractor acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interests of Purchasing Entity and are reasonable in scope and content.

d. Purchasing Entity Law. These provisions shall be applicable only to extent they are not in conflict with the applicable public disclosure laws of any Purchasing Entity.

e. The rights granted Purchasing Entities and Contractor obligations under this section shall also extend to Confidential Information, defined to include Participating Addenda, as well as Orders or transaction data relating to Orders under this Master Agreement that identify the entity/customer, Order dates, line item descriptions and volumes, and prices/rates. This provision does not apply to disclosure to the Lead State, a Participating State, or any governmental entity exercising an audit, inspection, or examination pursuant to section 29. To the extent permitted by law, Contractor shall notify the Lead State of the identify of any entity seeking access to the Confidential Information described in this subsection.

### **31. Public Information**

This Master Agreement and all related documents are subject to disclosure pursuant to the Purchasing Entity's public information laws.

### **32. Assignment/Subcontracts**

a. Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Master Agreement, in whole or in part, without the prior written approval of the Lead State.

b. The Lead State reserves the right to assign any rights or duties, including written assignment of contract administration duties to NASPO Cooperative Purchasing Organization LLC, doing business as NASPO ValuePoint and other third parties.

### **32. Changes in Contractor Representation**

The Contractor must notify the Lead State of changes in the Contractor's key administrative personnel managing the Master Agreement in writing within 10 calendar days of the change. The Lead State reserves the right to approve changes in key personnel, as identified in the Contractor's proposal. The Contractor agrees to propose replacement key personnel having substantially equal or better education, training, and experience as was possessed by the key person proposed and evaluated in the Contractor's proposal.

### **33. Independent Contractor**

The Contractor shall be an independent contractor. Contractor shall have no authorization, express or implied, to bind the Lead State, Participating States, other Participating Entities, or Purchasing Entities to any agreements, settlements, liability or understanding whatsoever, and agrees not to hold itself out as agent except as expressly set forth herein or as expressly agreed in any Participating Addendum.

### **34. Termination**

Unless otherwise stated, this Master Agreement may be terminated by either Lead State or Contractor upon 60 days written notice prior to the effective date of the termination. Further, any Participating Entity may terminate its participation upon 30 days written notice, unless otherwise limited or stated in the Participating Addendum. Termination may be in whole or in part. Any termination under this provision shall not affect the rights and obligations attending orders outstanding at the time of termination, including any right of a Purchasing Entity to indemnification by the Contractor, rights of payment for Products delivered and accepted, rights attending any warranty or default in performance in association with any Order, and requirements for records administration and audit. Termination of the Master Agreement due to Contractor default may be immediate.

### **35. Force Majeure**

Neither party to this Master Agreement shall be held responsible for delay or default caused by fire, riot, unusually severe weather, other acts of God, or war which are beyond that party's reasonable control. The Lead State may terminate this Master Agreement after determining such delay or default will reasonably prevent successful performance of the Master Agreement.

### **36. Defaults and Remedies**

a. The occurrence of any of the following events by Contractor shall be an event of default under this Master Agreement:

- (1) Nonperformance of contractual requirements; or



- (2) A material breach of any term or condition of this Master Agreement; or
- (3) Any certification, representation or warranty by Contractor in response to the solicitation or in this Master Agreement that proves to be untrue or materially misleading; or
- (4) Institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Contractor, or the appointment of a receiver or similar officer for Contractor or any of its property, which is not vacated or fully stayed within thirty (30) calendar days after the institution or occurrence thereof; or
- (5) Any default specified in another section of this Master Agreement.

b. Upon the occurrence of an event of default, the Lead State shall issue a written notice of default, identifying the nature of the default, and providing a period of 15 calendar days in which Contractor shall have an opportunity to cure the default. The Lead State shall not be required to provide advance written notice or a cure period and may immediately terminate this Master Agreement in whole or in part if the Lead State, in its sole discretion, determines that it is reasonably necessary to preserve public safety or prevent immediate public crisis. Time allowed for cure shall not diminish or eliminate Contractor's liability for damages, including liquidated damages to the extent provided for under this Master Agreement.

c. If Contractor is afforded an opportunity to cure and fails to cure the default within the period specified in the written notice of default, Contractor shall be in breach of its obligations under this Master Agreement and the Lead State shall have the right to exercise any or all of the following remedies:

- (1) Exercise any remedy provided by law; and
- (2) Terminate this Master Agreement and any related Contracts or portions thereof; and
- (3) Impose liquidated damages as provided in this Master Agreement; and
- (4) Suspend Contractor from being able to respond to future bid solicitations; and
- (5) Suspend Contractor's performance; and
- (6) Withhold payment until the default is remedied.

d. Unless otherwise specified in the Participating Addendum, in the event of a default under a Participating Addendum, a Participating Entity shall provide a written notice of default as described in this section and shall have all of the rights and remedies under this paragraph regarding its participation in the Master Agreement, in addition to those set forth in its Participating Addendum. Unless otherwise specified in a Purchase Order, a Purchasing Entity shall provide written notice of default as described in this section and have all of the rights and remedies under this paragraph and any applicable Participating Addendum with respect to an Order placed by the Purchasing Entity. Nothing in these Master Agreement Terms and Conditions shall be construed to limit the rights and remedies available to a Purchasing Entity under the applicable commercial code.

### **37. Waiver of Breach**

Failure of the Lead State, Participating Entity, or Purchasing Entity to declare a default or enforce any rights and remedies shall not operate as a waiver under this Master Agreement or Participating Addendum. Any waiver by the Lead State, Participating Entity, or Purchasing Entity must be in writing. Waiver by the Lead State or Participating Entity of any default, right or remedy under this Master Agreement or Participating Addendum, or by Purchasing Entity with respect to any Purchase Order, or breach of any terms or requirements of this Master Agreement, a Participating Addendum, or Purchase Order shall not be construed or operate as a waiver of any subsequent default or breach of such term or requirement, or of any other term or requirement under this Master Agreement, Participating Addendum, or Purchase Order.

### **38. Debarment**

The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. This certification represents a recurring certification made at the time any Order is placed under this Master Agreement. If the Contractor cannot certify this statement, attach a written explanation for review by the Lead State.

### **39. Indemnification**

a. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, and Purchasing Entities, along with their officers and employees, from and against third-party claims, damages or causes of action including reasonable attorneys' fees and related costs for any death, injury, or damage to tangible property arising from act(s), error(s), or omission(s) of the Contractor, its employees or subcontractors or volunteers, at any tier, relating to the performance under the Master Agreement.

b. Indemnification – Intellectual Property. The Contractor shall defend, indemnify and hold harmless NASPO, NASPO Cooperative Purchasing Organization LLC (doing business as NASPO ValuePoint), the Lead State, Participating Entities, Purchasing Entities, along with their officers and employees ("Indemnified Party"), from and against claims, damages or causes of action including reasonable attorneys' fees and related costs arising out of the claim that the Product or its use, infringes Intellectual Property rights ("Intellectual Property Claim") of another person or entity.

(1) The Contractor's obligations under this section shall not extend to any combination of the Product with any other product, system or method, unless the Product, system or method is:

- (a) provided by the Contractor or the Contractor's subsidiaries or affiliates;
- (b) specified by the Contractor to work with the Product; or

(c) reasonably required, in order to use the Product in its intended manner, and the infringement could not have been avoided by substituting another reasonably available product, system or method capable of performing the same function; or

(d) It would be reasonably expected to use the Product in combination with such product, system or method.

(2) The Indemnified Party shall notify the Contractor within a reasonable time after receiving notice of an Intellectual Property Claim. Even if the Indemnified Party fails to provide reasonable notice, the Contractor shall not be relieved from its obligations unless the Contractor can demonstrate that it was prejudiced in defending the Intellectual Property Claim resulting in increased expenses or loss to the Contractor. If the Contractor promptly and reasonably investigates and defends any Intellectual Property Claim, it shall have control over the defense and settlement of it. However, the Indemnified Party must consent in writing for any money damages or obligations for which it may be responsible. The Indemnified Party shall furnish, at the Contractor's reasonable request and expense, information and assistance necessary for such defense. If the Contractor fails to vigorously pursue the defense or settlement of the Intellectual Property Claim, the Indemnified Party may assume the defense or settlement of it and the Contractor shall be liable for all costs and expenses, including reasonable attorneys' fees and related costs, incurred by the Indemnified Party in the pursuit of the Intellectual Property Claim. Unless otherwise agreed in writing, this section is not subject to any limitations of liability in this Master Agreement or in any other document executed in conjunction with this Master Agreement.

#### **40. No Waiver of Sovereign Immunity**

In no event shall this Master Agreement, any Participating Addendum or any contract or any Purchase Order issued thereunder, or any act of the Lead State, a Participating Entity, or a Purchasing Entity be a waiver of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

This section applies to a claim brought against the Participating Entities who are states only to the extent Congress has appropriately abrogated the state's sovereign immunity and is not consent by the state to be sued in federal court. This section is also not a waiver by the state of any form of immunity, including but not limited to sovereign immunity and immunity based on the Eleventh Amendment to the Constitution of the United States.

#### **41. Governing Law and Venue**

a. The procurement, evaluation, and award of the Master Agreement shall be governed by and construed in accordance with the laws of the Lead State sponsoring and administering the procurement. The construction and effect of the Master Agreement

after award shall be governed by the law of the state serving as Lead State. The construction and effect of any Participating Addendum or Order against the Master Agreement shall be governed by and construed in accordance with the laws of the Participating Entity's or Purchasing Entity's State.

b. Unless otherwise specified in the RFP, the venue for any protest, claim, dispute or action relating to the procurement, evaluation, and award is in the Lead State. Venue for any claim, dispute or action concerning the terms of the Master Agreement shall be in the state serving as Lead State. Venue for any claim, dispute, or action concerning any Order placed against the Master Agreement or the effect of a Participating Addendum shall be in the Purchasing Entity's State.

c. If a claim is brought in a federal forum, then it must be brought and adjudicated solely and exclusively within the United States District Court for (in decreasing order of priority): the Lead State for claims relating to the procurement, evaluation, award, or contract performance or administration if the Lead State is a party; a Participating State if a named party; the state where the Participating Entity or Purchasing Entity is located if either is a named party.

#### **42. Assignment of Antitrust Rights**

Contractor irrevocably assigns to a Participating Entity who is a state any claim for relief or cause of action which the Contractor now has or which may accrue to the Contractor in the future by reason of any violation of state or federal antitrust laws (15 U.S.C. § 1-15 or a Participating Entity's state antitrust provisions), as now in effect and as may be amended from time to time, in connection with any goods or services provided in that state for the purpose of carrying out the Contractor's obligations under this Master Agreement or Participating Addendum, including, at the Participating Entity's option, the right to control any such litigation on such claim for relief or cause of action.

#### **43. Contract Provisions for Orders Utilizing Federal Funds**

Pursuant to Appendix II to 2 Code of Federal Regulations (CFR) Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards, Orders funded with federal funds may have additional contractual requirements or certifications that must be satisfied at the time the Order is placed or upon delivery. These federal requirements may be proposed by Participating Entities in Participating Addenda and Purchasing Entities for incorporation in Orders placed under this Master Agreement.

#### **44. Leasing or Alternative Financing Methods**

The procurement and other applicable laws of some Purchasing Entities may permit the use of leasing or alternative financing methods for the acquisition of Products under this Master Agreement. Where the terms and conditions are not otherwise prescribed in an applicable Participating Addendum, the terms and conditions for leasing or alternative financing methods are subject to negotiation between the Contractor and Purchasing Entity.

**45. Entire Agreement:** This Master Agreement, along with any attachment, contains the entire understanding of the parties hereto with respect to the Master Agreement unless a term is modified in a Participating Addendum with a Participating Entity. No click-through, or other end user terms and conditions or agreements required by the Contractor (“Additional Terms”) provided with any Services hereunder shall be binding on Participating Entities or Purchasing Entities, even if use of such Services requires an affirmative “acceptance” of those Additional Terms before access is permitted.

## eMarket Center Appendix

a. This Appendix applies whenever a catalog hosted by or integration of a punchout site with eMarket Center is required by the solicitation or either solution is proposed by a Contractor and accepted by the Lead State.

b. Supplier's Interface with the eMarket Center. There is no cost charged by JAGGAER to the Contractor for loading a hosted catalog or integrating a punchout site.

c. At a minimum, the Contractor agrees to the following:

(1) Implementation Timeline: NASPO ValuePoint eMarket Center Site Admin shall provide a written request to the Contractor to begin enablement process. The Contractor shall have fifteen (15) days from receipt of written request to work with NASPO ValuePoint and JAGGAER to set up an enablement schedule, at which time JAGGAER's technical documentation shall be provided to the Contractor. The schedule will include future calls and milestone dates related to test and go live dates. The contractor shall have a total of Ninety (90) days to deliver either a (1) hosted catalog or (2) punch-out catalog, from date of receipt of written request.

(2) NASPO ValuePoint and JAGGAER will work with the Contractor, to decide which of the catalog structures (either hosted or punch-out as further described below) shall be provided by the Contractor. **Whether hosted or punch-out, the catalog must be strictly limited to the Contractor's awarded contract offering (e.g. products and/or services not authorized through the resulting cooperative contract should not be viewable by NASPO ValuePoint Participating Entity users).**

(a) Hosted Catalog. By providing a hosted catalog, the Contractor is providing a list of its awarded products/services and pricing in an electronic data file in a format acceptable to JAGGAER, such as Tab Delimited Text files. In this scenario, the Contractor must submit updated electronic data no more than once per 30 days to the eMarket Center for the Lead State's approval to maintain the most up-to-date version of its product/service offering under the cooperative contract in the eMarket Center.

(b) Punch-Out Catalog. By providing a punch-out catalog, the Contractor is providing its own online catalog, which must be capable of being integrated with the eMarket Center as a. Standard punch-in via Commerce eXtensible Markup Language (cXML). In this scenario, the Contractor shall validate that its online catalog is up-to-date by providing a written update no more than once per 30 days to the Lead State stating they have audited the offered products/services and pricing listed on its online catalog. The site must also return detailed UNSPSC codes (as outlined in line 3) for each line item. Contractor also agrees to provide e-Quote functionality to facilitate volume discounts.

d. Revising Pricing and Product Offerings: Any revisions to product/service offerings (new products, altered SKUs, new pricing etc.) must be pre-approved by the Lead State and shall be subject to any other applicable restrictions with respect to the frequency or

amount of such revisions. However, no cooperative contract enabled in the eMarket Center may include price changes on a more frequent basis than once per year (see required Price Guarantee Period section 11). The following conditions apply with respect to hosted catalogs:

(1) Updated pricing files are required each calendar month of the month and shall go into effect in the eMarket Center on as approved by the Lead State contract administrator.

(2) Lead State-approved price changes are not effective until implemented within the eMarket Center. Errors in the Contractor's submitted pricing files will delay the implementation of the price changes in eMarket Center.

e. Supplier Network Requirements: Contractor shall join the JAGGAER Supplier Network (SQSN) and shall use JAGGAER's Supplier Portal to import the Contractor's catalog and pricing, into the JAGGAER system, and view reports on catalog spend and product/pricing freshness. The Contractor can receive orders through electronic delivery (cXML) or through low-tech options such as fax. More information about the SQSN can be found at: [www.sciquest.com](http://www.sciquest.com) or call the JAGGAER Supplier Network Services team at 800-233-1121.

f. Minimum Requirements: Whether the Contractor is providing a hosted catalog or a punch-out catalog, the Contractor agrees to meet the following requirements:

(1) Catalog must contain the most current pricing, including all applicable administrative fees and/or discounts, as well as the most up-to-date product/service offering the Contractor is authorized to provide in accordance with the cooperative contract; and

(2) The accuracy of the catalog must be maintained by Contractor throughout the duration of the cooperative contract; and

(3) The Catalog must include a Lead State contract identification number; and

(4) The Catalog must include detailed product line item descriptions; and

(5) The Catalog must include pictures when possible; and

(6) The Catalog must include any additional NASPO ValuePoint and Participating Addendum requirements. Although suppliers in the SQSN normally submit one (1) catalog, it is possible to have multiple contracts applicable to different NASPO ValuePoint Participating Entities. For example, a supplier may have different pricing for state government agencies and Board of Regents institutions. Suppliers have the ability and responsibility to submit separate contract pricing for the same catalog if applicable. The system will deliver the appropriate contract pricing to the user viewing the catalog.

g. Order Acceptance Requirements: Contractor must be able to accept Purchase Orders via fax or cXML. The Contractor shall provide positive confirmation via phone or email within 24 hours of the Contractor's receipt of the Purchase Order. If the Purchasing Order is received after 3pm EST on the day before a weekend or holiday, the Contractor must provide positive confirmation via phone or email on the next business day.

h. UNSPSC Requirements: Contractor shall support use of the United Nations Standard Product and Services Code (UNSPSC). UNSPSC versions that must be adhered to are driven by JAGGAER for the suppliers and are upgraded every year. NASPO ValuePoint reserves the right to migrate to future versions of the UNSPSC and the Contractor shall be required to support the migration effort. All line items, goods or services provided under the resulting statewide contract must be associated to a UNSPSC code. All line items must be identified at the most detailed UNSPSC level indicated by segment, family, class and commodity.

i. Applicability: Contractor agrees that NASPO ValuePoint controls which contracts appear in the eMarket Center and that NASPO ValuePoint may elect at any time to remove any supplier's offering from the eMarket Center.

j. The Lead State reserves the right to approve the pricing on the eMarket Center. This catalog review right is solely for the benefit of the Lead State and Participating Entities, and the review and approval shall not waive the requirement that products and services be offered at prices (and approved fees) required by the Master Agreement.

k. Several NASPO ValuePoint Participating Entities currently maintain separate JAGGAER eMarketplaces, these Participating Entities do enable certain NASPO ValuePoint Cooperative Contracts. In the event one of these entities elects to use this NASPO ValuePoint Cooperative Contract (available through the eMarket Center) but publish to their own eMarketplace, the Contractor agrees to work in good faith with the entity and NASPO ValuePoint to implement the catalog. NASPO ValuePoint does not anticipate that this will require substantial additional efforts by the Contractor; however, the supplier agrees to take commercially reasonable efforts to enable such separate JAGGAER catalogs.

**(December 2017)**



## Attachment B – Scope of Work

### I. Data Communications Award Categories

The scope for this RFP and resulting contract is as provided below. A vendor may offer products (i.e. white box, artificial intelligence, etc.) under multiple categories so long as the vendor has received an award for the applicable category it is offering the provided equipment / service. Each category also allows for Internet of Things (IoT) products. These products must be an IoT product that can be deployed within, upon, or integrated into a government agency's physical asset to address government line of business needs. Proposals are expected to include IoT products designed to support common government lines of business in specific subcategories i.e. routers, switches, end points, etc. IoT products can only be provided in categories that the vendor is awarded in and can include endpoints that support items in that category.

#### **Category 1.1: UNIFIED COMMUNICATIONS (UC).**

A set of products that provides a consistent unified user interface and user experience across multiple devices and modes of communications. Unified Communications that is able to provide services such as session management, voice, video, messaging, mobility, and meeting solutions (i.e., web, audio, IM&P, file sharing, white boarding, guest support, etc.). It can provide the foundation for advanced unified communications capabilities of IM and presence-based services and extends telephony features and capabilities to packet telephony network devices such as IP phones, media processing devices, Voice over IP (VoIP) gateways, and multimedia applications. Additional services, such as unified messaging, multimedia conferencing, collaborative contact centers, and interactive multimedia response systems, are made possible through open telephony APIs. General UC solution capabilities should include:

- High Availability for Call Processing
- Hardware Platform High Availability
- Network Connectivity High Availability
- PSTN Access resiliency
- Call Processing Redundancy
- Optional Branch Office Survivability Services

**1.1.1 IP Telephony** — Solutions utilized to provide the delivery of the telephony application (for example, call setup and teardown, and telephony features) over IP, instead of using circuit-switched or other modalities. Capabilities should include:

- Support for analog, digital, and IP endpoints
- Centralized Management
- Enterprise Telephony Features (CFx, Transfer, CID, Shared line appearance, One Number Service, etc.)
- Provide basic hunt group and call queuing capabilities
- Flexibility to configure queue depth and hold time, play unique announcements and Music on Hold (MoH), log in and log out users from a queue and basic queue statistics (from the phone
- E911 Support
  - National E911 Routing Services (proper PSAP routing when PSTN access is centralized)
  - 911 Device Tracking Services
  - 911 On-Site Notification Services

**1.1.2 Instant messaging/ Presence** — Solutions that allow communication over the Internet Protocol, within the enterprise, and remotely, as well as with guest users that offers quick transmission of text-based messages from sender to receiver. In push mode between two or more people using personal computers, Desktop (Windows/Mac/VDI/Linux), Mobile/Smartphone, Tablet, along with shared clients, instant messaging basically offers real-time direct written language-based online chat. Instant messaging may also provide video calling, file sharing, PC-to-PC voice calling and PC-to-regular-phone calling.

- IM Persistency / Workstream Collab
- File Sharing Services, Desktop Sharing Services

**1.1.3 Unified messaging** — Integration of different electronic messaging and communications media (e-mail, SMS, Fax, voicemail, video messaging, etc.) technologies into a single interface, accessible from a variety of different devices.

- Ability to access and manage voice messages in a variety of ways, using email inbox, Web browser, desktop client, VoIP phone, or mobile phone
- Visual Voicemail Support (Optional)
- ASR / Transcription Services for recorded messages

**1.1.4 Contact Center** — A computer-based system that provides call and contact routing for high-volume telephony transactions, with specialist answering “agent” stations and a sophisticated real-time contact management system. The definition includes all contact center systems that provide inbound contact handling capabilities, outbound call/contact center and automatic contact distribution, combined with a high degree of sophistication in terms of dynamic contact traffic routing management.

**1.1.5 Communications End Points and Applications**

- Attendant Consoles (Telephone Station)
- IP Phones (desktop devices and accessories)
- Room Based Conferencing Endpoints (Conf Phones, SparkBoard, JamBoard, Surface Hub)

**1.1.6 UC Network Monitoring** — Provides end-to-end service management for Unified Communications. Capabilities include testing, performance monitoring, configuration management, accounting/billing, analytics (capacity planning), contact center specialized reports (utilization, queue KIs, call abandonment ratios, etc.), and business intelligence reporting.

**1.1.7 Collaboration** — Voice, video, workstream collaboration, and web conferencing; messaging; mobile applications; and enterprise social software. Doesn't include the audio visual software or hardware.

**1.1.8 Collaborative Video** — A set of immersive video technologies that enable people to feel or appear as if they were present in a location that they are not physically in. Immersive video consists of a multiple codec video system, where each meeting attendee uses an immersive video room to “dial in” and can see/talk to every other member on a screen (or screens) as if they were in the same room and provides call control that enables intelligent video bandwidth management.

**1.1.9 Content Delivery Systems (CDS)** — A large distributed system of servers deployed in multiple data centers connected by the Internet. The purpose of the content delivery system is to serve content to a

very large number of end-users (i.e., quarterly all hands meetings/webinar) with high availability and high performance. CDSs serve content over the Internet, including web objects (text, graphics, URLs, and scripts), downloadable objects (media files, software, documents), applications (e-commerce, portals), live streaming media, on-demand streaming media, and social networks.

## **Category 1.2: NETWORKING**

### **1.2.1 Network Application Services.**

Application networking solutions and technologies that enable the successful and secure delivery of applications to local, remote, and branch-office users using technology to accelerate, secure, and increase availability of both application traffic and computing resources.

**1.2.1.1 Virtualized Load Balancers** — Virtual devices that act like a reverse proxy to distribute network and/or application traffic across multiple servers to improve the concurrent user capacity and overall reliability of applications. Capabilities should include:

- SSL (Secure Sockets Layer) Off-loading
- Caching capabilities
- Layer 4 Load Balancing
- Layer 7 Load Balancing
- Detailed Reporting
- Supports multiple load balancers in the same system for multiple groups
- Supports TLS1.2

**1.2.1.2 WAN Optimization** — An appliance utilizing a collection of techniques for increasing data-transfer efficiencies across wide-area networks (WAN). Capabilities should include:

- CIFS (Common Internet File System) acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization
- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

### **1.2.2 Networking Software.**

Software that runs on a server, or within the Cloud, and enables the server to manage data, users, groups, security, applications, and other networking functions. The network operating system is designed to allow transfer of data among multiple computers in a network, typically a local area network (LAN), a private network or to other networks. Networking software capabilities should include:

- Restartable Process
- High availability options
- Targeted operating systems, i.e. DC, campus, core, wan, etc.
- Operating System Efficiencies

- Network analysis tools (solutions utilized to collect, classify, analyze, and securely store log messages).

**1.2.2.1 Network Management and Automation** — Software products and solutions for network automation, cloud computing, and IT systems management.

**1.2.2.2 Data Center Management and Automation** — Software products and solutions that capture and automate manual tasks across servers, network, applications, and virtualized infrastructure.

**1.2.2.3 Cloud Portal and Automation** — Software products and solutions for cloud management with policy-based controls for provisioning virtual and physical resources.

**1.2.2.4 Branch Office Management and Automation** — Software products and solutions for management of branch offices. Capabilities include remote troubleshooting, device management, and WAN performance monitoring.

### **1.2.3 Network Optimization and Acceleration.**

Devices and tools for increasing data-transfer efficiencies across wide-area networks.

**1.2.3.1 Data Analytics** — Appliance for improving network management by more effectively factoring in issues related to congestion, such as utilization, service consumption and routing. Provides real-time insights into network traffic to determine the value of different portions of that traffic.

**1.2.3.2 Dynamic Load Balancing (Network Traffic Management)** — An appliance that performs a series of checks and calculations to determine which server can best service each client request in order to select the server that can successfully fulfill the client request and do so in the shortest amount of time without overloading either the server or the server farm as a whole.

**1.2.3.3 WAN Acceleration** — Appliance that optimizes bandwidth to improve the end user's experience on a wide area network (WAN). Capabilities should include:

- CIFS acceleration
- Data Compression
- SSL encryption/decryption for acceleration (Optional)
- Layer 4-7 visibility
- Application Specific optimization

**1.2.3.4 High Availability and Redundancy** — Limits any disruption to network uptime should an appliance face unforeseen performance issues. Transparently redistributes workloads to surviving cluster appliances without impacting communication throughout the cluster.

### **1.2.4 Optical Networking.**

High capacity networks based on optical technology and components that provide routing, grooming, and restoration at the wavelength level as well as wavelength based services.

**1.2.4.1 Core DWDM (Dense Wavelength Division Multiplexing) Switches** — Switches used in systems designed for long haul and ultra long-haul optical networking applications.

**1.2.4.2 Edge Optical Switches** — Provide entry points into the enterprise or service provider core networks.

**1.2.4.3 Optical Network Management** — Provides capabilities to manage the optical network and allows operators to execute end-to-end circuit creation.

**1.2.4.4 IP over DWDM (IPoDWDM)** — A device utilized to integrate IP Routers and Switches in the OTN (Optical Transport Network).

### **Category 1.3: ROUTERS, SWITCHES, SECURITY, AND NETWORKING STORAGE**

#### **1.3.1 Routers.**

A device that forwards data packets along networks. A router is connected to at least two networks, commonly two LANs or WANs or a LAN and its ISP's network. Routers are located at gateways, the places where two or more networks connect, and are the critical device that keeps data flowing between networks and keep the networks connected to the Internet.

**1.3.1.1 Branch Routers** — A multiservice router typically used in branch offices or locations with limited numbers of users and supports flexible configurations/feature. For example: security, VoIP, wan acceleration, etc.

**1.3.1.2 Network Edge Routers** — A specialized router residing at the edge or boundary of a network. This router ensures the connectivity of its network with external networks, a wide area network or the Internet. An edge router uses an External Border Gateway Protocol, which is used extensively over the Internet to provide connectivity with remote networks.

**1.3.1.3 Core Routers** - High performance, high speed, low latency routers that enable Enterprises to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV and Video on Demand (VoD), and Software as a Service (SaaS).

**1.3.1.4 Service Aggregation Routers** — Provides multiservice adaptation, aggregation and routing for Ethernet and IP/MPLS networks to enable service providers and enterprise edge networks simultaneously host resource-intensive integrated data, voice and video business and consumer services.

**1.3.1.5 Carrier Ethernet Routers** — High performance routers that enable service providers to deliver a suite of data, voice, and video services to enable next-generation applications such as IPTV, Video on Demand (VoD), and Software as a Service (SaaS).

#### **1.3.2 Security.**

**1.3.2.1 Data Center and Virtualization Security Products and Appliances** — Products designed to protect high-value data and data center resources with threat defense and policy control.

**1.3.2.2 Intrusion Detection/Protection and Firewall Appliances** — Provide comprehensive inline network firewall security from worms, Trojans, spyware, key loggers, and other malware. This includes Next-Generation Firewalls (NGFW), which offer a wire-speed integrated network platform that performs deep inspection of traffic and blocking of attacks. Intrusion Detection/Protection and Firewall Appliances should provide:

- Non-disruptive in-line bump-in-the-wire configuration
- Standard first-generation firewall capabilities, e.g., network-address translation (NAT), stateful protocol inspection (SPI) and virtual private networking (VPN), etc.
- Application awareness, full stack visibility and granular control
- Capability to incorporate information from outside the firewall, e.g., directory-based policy, blacklists, white lists, etc.
- Upgrade path to include future information feeds and security threats
- SSL decryption to enable identifying undesirable encrypted applications (Optional)

**1.3.2.3 Logging Appliances and Analysis Tools** — Solutions utilized to collect, classify, analyze, and securely store log messages.

**1.3.2.4 Secure Edge and Branch Integrated Security Products** — Network security, VPN, and intrusion prevention for branches and the network edge. Products typically consist of appliances or routers.

**1.3.2.5 Secure Mobility Products** — Delivers secure, scalable access to corporate applications across multiple mobile devices.

**1.3.2.6 Encryption Appliances** — A network security device that applies crypto services at the network transfer layer - above the data link level, but below the application level.

**1.3.2.7 On-premise and Cloud-based services for Network Communications Integrity** — Solutions that provide threat protection, data loss prevention, message level encryption, acceptable use and application control capabilities to secure web and email communications. This could include cloud access security brokers (CASBs) and DNS security.

**1.3.2.8 Secure Access** — Products that provide secure access to the network for any device, including personally owned mobile devices (laptops, tablets, and smart phones). Capabilities should include:

- Management visibility for device access
- Self-service on-boarding
- Centralized policy enforcement
- Differentiated access and services
- Device Management

### **1.3.3 Storage Networking.**

High-speed network of shared storage devices connecting different types of storage devices with data servers.

**1.3.3.1 Director Class SAN (Storage Area Network) Switches and Modules** — A scalable, high-performance, and protocol-independent designed primarily to fulfill the role of core switch in a core-edge Fibre Channel (FC), FCOE or similar SAN topology. A Fibre Channel director is, by current convention, a switch with at least 128 ports. It does not differ from a switch in core FC protocol functionality. Fibre Channel directors provide the most reliable, scalable, high-performance foundation for private cloud storage and highly virtualized environments.

**1.3.3.2 Fabric and Blade Server Switches** — A Fibre Channel switch is a network switch compatible with the Fibre Channel (FC) protocol. It allows the creation of a Fibre Channel fabric, which is currently the core

component of most SANs. The fabric is a network of Fibre Channel devices, which allows many-to-many communication, device name lookup, security, and redundancy. FC switches implement zoning; a mechanism that disables unwanted traffic between certain fabric nodes.

**1.3.3.3 Enterprise and Data Center SAN and VSAN (Virtual Storage Area Network) Management** — Management tools to provisions, monitors, troubleshoot, and administers SANs and VSANs.

**1.3.3.4 SAN Optimization** — Tools to help optimize and secure SAN performance (ie. Encryption of data-at-rest, data migration, capacity optimization, data reduction, etc.

#### **1.3.4: Switches.**

Layer 2/3 devices that are used to connect segments of a LAN (local area network) or multiple LANs and to filter and forward packets among them.

**1.3.4.1 Campus LAN – Access Switches** — Provides initial connectivity for devices to the network and controls user and workgroup access to internetwork resources. The following are some of the features a campus LAN access switch should support:

1. Security
  - a. SSHv2 (Secure Shell Version 2)
  - b. 802.1X (Port Based Network Access Control)
  - c. Port Security
  - d. DHCP (Dynamic Host Configuration Protocol) Snooping
2. VLANs
3. Fast Ethernet/Gigabit Ethernet
4. PoE (Power over Ethernet)
5. link aggregation
6. 10 Gb support
7. Port mirroring
8. Span Taps
9. Support of IPv6 and IPv4
10. Standards-based rapid spanning tree
11. Netflow Support (Optional).

**1.3.4.2 Campus LAN – Core Switches** — Campus core switches are generally used for the campus backbone and are responsible for transporting large amounts of traffic both reliably and quickly. Core switches should provide:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security
  - SSHv2
  - MacSec encryption
  - Role-Based Access Control Lists (ACL)
- Support of IPv6 and IPv4
- 1/10/40/100 Gbps support

- IGP (Interior Gateway Protocol) routing
- EGP (Exterior Gateway Protocol) routing
- VPLS (Virtual Private LAN Service) Support
- VRRP (Virtual Router Redundancy Protocol) Support
- Netflow Support.

**1.3.4.3 Campus Distribution Switches** — Collect the data from all the access layer switches and forward it to the core layer switches. Traffic that is generated at Layer 2 on a switched network needs to be managed, or segmented into Virtual Local Area Networks (VLANs), Distribution layer switches provides the inter-VLAN routing functions so that one VLAN can communicate with another on the network. Distribution layer switches provides advanced security policies that can be applied to network traffic using Access Control Lists (ACLs).

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Security (SSHv2 and/or 802.1X)
- Support of IPv6 and IPv4
- Jumbo Frames Support
- Dynamic Trunking Protocol (DTP)
- Per-VLAN Rapid Spanning Tree (PVRST+)
- Switch-port auto recovery
- NetFlow Support or equivalent

**1.3.4.4 Data Center Switches** — Data center switches, or Layer 2/3 switches, switch all packets in the data center by switching or routing good ones to their final destinations, and discard unwanted traffic using Access Control Lists (ACLs) a minimum of 10 Gigabit speeds. High availability and modularity differentiates a typical Layer 2/3 switch from a data center switch. Capabilities should include:

- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- Ultra-low latency through wire-speed ports with nanosecond port-to-port latency and hardware-based Inter-Switch Link (ISL) trunking
- Load Balancing across Trunk group able to use packet based load balancing scheme
- Bridging of Fibre Channel SANs and Ethernet fabrics
- Jumbo Frame Support
- Plug and Play Fabric formation that allows a new switch that joins the fabric to automatically become a member
- Ability to remotely disable and enable individual ports
- Support NetFlow or equivalent

**1.3.4.5 Software Defined Networks (SDN)** — An application in SDN that manages flow control to enable intelligent networking.



**1.3.4.6 Software Defined Networks (SDN) - Virtualized Switches and Routers** — Technology utilized to support software manipulation of hardware for specific use cases.

**1.3.4.7 Software Defined Networks (SDN) — Controllers** - is an application in software-defined networking (SDN) that manages flow control to enable intelligent networking. SDN controllers are based on protocols, such as OpenFlow, that allow servers to tell switches where to send packets. The SDN controller lies between network devices at one end and applications at the other end. Any communications between applications and devices have to go through the controller. The controller uses multiple routing protocols including OpenFlow to configure network devices and choose the optimal network path for application traffic.

**1.3.4.8 Carrier Aggregation Switches** — Carrier aggregation switches route traffic in addition to bridging (transmitted) Layer 2/Ethernet traffic. Carrier aggregation switches' major characteristics are:

- Designed for Metro Ethernet networks
- Designed for video and other high bandwidth applications
- Supports a variety of interface types, especially those commonly used by Service Providers

Capabilities should include:

- Redundant Processors
- Redundant Power
- IPv4 and IPv6 unicast and multicast
- High bandwidth
- Low latency
- Hot swappable power supplies and fans
- MPLS (Multiprotocol Label Switching)
- BGP (Border Gateway Protocol)
- Software router virtualization and/or multiple routing tables
- Policy based routing
- Layer 2 functionality
  - Per VLAN Spanning Tree
  - Rapid Spanning Tree
  - VLAN IDs up to 4096
  - Layer 2 Class of Service (IEEE 802.1p)
  - Link Aggregation Control Protocol (LACP)
  - QinQ (IEEE 802.1ad)

**1.3.4.9 Carrier Ethernet Access Switches** — A carrier Ethernet access switch can connect directly to the customer or be utilized as a network interface on the service side to provide layer 2 services.

- Hot-swappable and field-replaceable integrated power supply and fan tray
- AC or DC power supply with minimum DC input ranging from 18V to 32 VDC and 36V to 72 VDC
- Ethernet and console port for manageability
- SD flash card slot for additional external storage
- Stratum 3 network clock
- Line-rate performance with a minimum of 62-million packets per second (MPPS) forwarding rate

- Support for dying gasp on loss of power
- Support for a variety of small form factor pluggable transceiver (SFP and SFP+) with support for Device Object Model (DOM)
- Timing services for a converged access network to support mobile solutions, including Radio Access Network (RAN) applications
- Support for Synchronous Ethernet (SyncE) services
- Supports Hierarchical Quality of Service (H-QoS) to provide granular traffic-shaping policies
- Supports Resilient Ethernet Protocol REP/G.8032 for rapid layer-two convergence

#### **Category 1.4: WIRELESS.**

Provides connectivity to wireless devices within a limited geographic area. System capabilities should include:

- Redundancy and automatic failover
- IPv6 compatibility
- NTP Support

**1.4.1 Access Points** — A wireless Access Point (AP) is a device that allows wireless devices to connect to a wired network using Wi-Fi, or related standards. Capabilities should include:

- 802.11a/b/g/n
- 802.11n
- 802.11ac
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)
- UL2043 plenum rated for safe mounting in a variety of indoor environments
- Support AES-CCMP (128-bit)
- Provides real-time wireless intrusion monitoring and detection

**1.4.2 Outdoor Wireless Access Points** — Outdoor APs are rugged, with a metal cover and a DIN rail or other type of mount. During operations they can tolerate a wide temperature range, high humidity and exposure to water, dust, and oil. Capabilities should include:

- Flexible Deployment Options
- Provides real-time wireless intrusion monitoring and detection
- Capable of controller discovery method via DHCP (onsite controller or offsite through Cloud Architecture)

**1.4.3 Wireless LAN Controllers** — An onsite or offsite solution utilized to manage Light-weight access points in large quantities by the network administrator or network operations center. The WLAN controller automatically handles the configuration of wireless access-points. Capabilities should include:

- Ability to monitor and mitigate RF interference/self-heal
- Support seamless roaming from AP to AP without requiring re-authentication
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

- System encrypts all management layer traffic and passes it through a secure tunnel
- Policy management of users and devices provides ability to de-authorize or deny devices without denying the credentials of the user, nor disrupting other AP traffic
- Support configurable access control lists to filter traffic and denying wireless peer to peer traffic

**1.4.4 Wireless LAN Network Services and Management** — Enables network administrators to quickly plan, configure and deploy a wireless network, as well as provide additional WLAN services. Some examples include wireless security, asset tracking, and location services. Capabilities should include:

- Provide for redundancy and automatic failover
- Historical trend and real time performance reporting is supported
- Management access to wireless network components is secured
- SNMPv3 enabled
- RFC 1213 compliant
- Automatically discover wireless network components
- Capability to alert for outages and utilization threshold exceptions
- Capability to support Apple's Bonjour Protocol / mDNS
- QoS / Application identification capability

**1.4.5 Cloud-based services for Access Points** — Cloud-based management of campus-wide WiFi deployments and distributed multi-site networks. Capabilities include:

- Zero-touch access point provisioning
- Network-wide visibility and control
- RF optimization,
- Firmware updates

**1.4.6 Mobile Device Management (MDM)** — MDM technology utilized to allow employees to bring personally owned mobile devices (laptops, tablets, and smart phones) to their workplace, and use those devices to access privileged government information and applications in a secure manner. Capabilities should include:

- Ability to apply corporate policy to new devices accessing the network resources, whether wired or wireless
- Provide user and devices authentication to the network
- Provide secure remote access capability
- Support 802.1x
- Network optimization for performance, scalability, and user experience

## **Category 1.5: FACILITY MANAGEMENT, MONITORING, AND CONTROL.**

Technology utilized in the management, monitoring and control of facilities. Technologies include:

- a. Access control systems
- b. Detection/Identification systems, such as surveillance systems, closed circuit television cameras, or IP camera networks and the associated monitoring systems.

- c. Response systems such as alert systems, desktop monitoring systems, radios, and digital signage.
- d. Building and energy controls

## **II. Value Added Services**

For each Award Category above, the following valued services should also be available for procurement at the time of product purchase or anytime afterwards. This provided list of value added services is not intended to be exhaustive, and may be updated pursuant to the terms of the resulting Master Agreement (see main RFP document section 5.2).

**2.1 Maintenance Services** — Capability to provide technical support, software maintenance, flexible hardware coverage, and smart, proactive device diagnostics for hardware.

### **2.2 Professional Services**

- a. Deployment Services
  - i. Survey/ Design Services — Includes, but not limited to, discovery, design, architecture review/validation, and readiness assessment.
  - ii. Implementation Services — Includes, but not limited to, basic installation and configuration or end-to-end integration and deployment.
  - iii. Optimization — Includes, but not limited to, assessing operational environment readiness, identify ways to increase efficiencies throughout the network, and optimize Customer's infrastructure, applications and service management.
- b. Remote Management Services — Includes, but not limited to, continuous monitoring, incident management, problem management, change management, and utilization and performance reporting that may be on a subscription basis.
- c. Consulting/Advisory Services — Includes, but not limited to, assessing the availability, reliability, security and performance of Customer's existing solutions.
- d. Data Communications Architectural Design Services — Developing architectural strategies and roadmaps for transforming Customer's existing network architecture and operations management.
- e. Statement of Work (SOW) Services — Customer-specific tasks to be accomplished and/or services to be delivered based on Customer's business and technical requirements.
- f. Testing Services — Includes, but not limited to, testing the availability, reliability, security and performance of Customer's existing solutions

### **2.3 Partner Services** — Provided by Contractor's Authorized Partners/Resellers.

- a. Subject to Contractor's approval and the certifications held by its Partners/Resellers, many Partners/Resellers can also offer and provide some or all of the Services as listed above at competitive pricing, along with local presence and support. As the primary Contractor (OEM), Contractor is ultimately responsible for the service and performance of its Partners/ Resellers. Customers may have the option to purchase the Services to be directly delivered by Contractor (OEM) or its certified Partners/Resellers.

**2.4 Training** — Learning offerings for IT professionals on networking technologies, including but not limited to designing, implementing, operating, configuring, and troubleshooting network systems pertaining to items provided under the master agreement.

## ATTACHMENT B.1 OEM EVALUATED QUALIFICATIONS

Per RFP Section 4.2, OEM Evaluated Qualifications, Offeror's **must** complete this Attachment and submit it with their response.

Offeror's who meet all mandatory minimum requirements outlined above will then be evaluated on the following items. All Offerors are required to submit a point by point response to the following items.

Provide the information requested below detailing how your organization has the ability to provide the following criteria. Do not submit a full catalog herein this section or generic literature. Submit information specific to the characteristics listed below.

Vendor Name: vendor input

Information Sought	Vendor Response
<b>4.2.1. Company Profile and References</b>	
<u>4.2.1.1 Years.</u> Number of years in business and number of employees.	
<u>4.2.1.2 Organizational Structure.</u> Has there been a recent change in organizational structure (e.g., management team) or control (e.g., merger or acquisition) of your company? If the answer is yes: (a) explain why the change occurred and (b) how this change has affected your company.	
<u>4.2.1.3 Company History.</u> Discuss your company's history. Has growth been organic, through mergers and acquisitions, or both?	
<u>4.2.1.4 Debarment.</u> Has bidder ever been debarred, suspended, or disqualified from bidding or contracting with any public entity? If yes, provide the date, the entity, and details about the situation.	
<u>4.2.1.5 Litigation.</u> Provide details of all past or pending litigation or government action filed or claims that could affect Respondent's performance under a resulting master agreement. Please provide the date of initial filing, case name and court number, and jurisdiction.	
<u>4.2.1.6 Default.</u> Within the last 5 years, has your company or any of its related business entities defaulted on a contract or had a contract terminated for cause? If yes, provide the date, contracting entity, type of contract, and details about the termination or default.	
<u>4.2.1.7 Annual Sales.</u> State your gross annual sales for the last 5 years. If receiving a contract under this RFP will increase your gross revenue by more than 25% from last year's sales, explain how the company will scale-up to manage this increase.	

<p><b>4.2.1.8 Financial Statements.</b> Provide audited financial statements to the State and should meet a minimum Dun and Bradstreet (D&amp;B) credit rating of 3A2 or better, or a recognized equivalent rating. Please provide the Respondent's D&amp;B Number and the composite credit rating. The State reserves the right to verify this information. If a branch or wholly owned subsidiary is bidding on this RFP, please provide the D&amp;B Number and score for the parent company that will be financially responsible for performance of the agreement. Prime contractors working on behalf of Respondents must submit financial statements that demonstrate financial stability, and adequate working capital, but do not need to meet 3A2 credit rating requirements.</p>	<p>[Vendor upload file named – Vendor Name 4.2.1.8 Financial Statements]</p>
<p><b>4.2.1.9 Experience &amp; References.</b> Describe at least 3 relevant experiences (below) from the last 5 years supporting your ability to successfully manage a contract of similar size and scope for the work described in this RFP.</p>	
<p><b>1<sup>st</sup> Experience &amp; Reference</b></p>	
<p>Company name Contact name Contact role at time of project Contact phone Contact email City State Zip</p>	
<p>1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	
<p>Dollar value</p>	
<p>Start and end date (mm/yy – mm/yy)</p>	
<p>Status (completed, live, other – specify phase)</p>	
<p>Results obtained</p>	
<p><b>2<sup>nd</sup> Experience &amp; Reference</b></p>	
<p>Company name Contact name Contact role at time of project Contact phone Contact email City State Zip</p>	
<p>1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?</p>	
<p>Dollar value</p>	
<p>Start and end date (mm/yy – mm/yy)</p>	
<p>Status (completed, live, other – specify phase)</p>	
<p>Results obtained</p>	
<p><b>3<sup>rd</sup> Experience &amp; Reference</b></p>	

Company name Contact name Contact role at time of project Contact phone Contact email City State Zip	
1. Project name and description of the scope of the project 2. What role did your company play? 3. How is this project experience relevant to the subject of this RFP?	
Dollar value	
Start and end date (mm/yy – mm/yy)	
Status (completed, live, other – specify phase)	
Results obtained	
4.2.1.10 Marketing Plan. Describe your how you intend to market your equipment and services to NASPO ValuePoint and Participating Entities.	
<b>4.2.2. Ability to Supply NASPO ValuePoint Member States</b>	
4.2.2.1 Strategic Relationships. Describe partnerships and strategic relationships you think will bring significant value to the resulting Master Agreement.	
4.2.2.2 Reseller Program. Demonstrate how you will provide an Effective Reseller Program managed by the OEM (Contract holder) in NASPO ValuePoint States.	
4.2.2.3 Onboarding. Describe your process to qualifying and onboarding partners and sales personnel to represent the product.	
4.2.2.4 Partner Training. Any training for partners and sales staff to ensure they understand the terms and conditions of the Master Agreement and individual Participating Addenda. Does your company provide follow-up refresher training on a semi-annual or annual basis for partners and sales staff.	
4.2.2.5 Partner Restrictions. Describe any restrictions you place on your partners / resellers from selling other OEM solutions.	
4.2.2.6 Proposed Partner List. Provide your proposed list of partners in the structure outlined in Attachment D and which Award Categories they will service for all States.	[Vendor upload file named – Vendor Name 4.2.2.6 Proposed Partner List]
<b>4.2.3. Ability to Provide Technical Support to End Users</b>	
4.2.3.1 SLA. Provide your proposed Service Level Agreement (SLA) that includes, but is not limited to: help desk support, response times, resolution, downtime credits, etc.	
4.2.3.2 Escalation. Describe your escalation procedures.	
4.2.3.3 End User Training. Describe your offered training program to end users.	



4.2.3.4 Maintenance Program. Describe your offered maintenance program.	
<b>4.2.4. Qualifications and Technical Ability</b>	
4.2.4.1 Resume. Provide a resume, in the format of Attachment C, for the Contract Manager who will be assigned to this contract, including, but not limited to the following qualifications: -- Minimum 2 years' experience in contract management with public sector clients, -- Minimum 2 years' experience in leadership roles overall, and -- Minimum 2 years' experience in the Data Communications Products and Services industry.	[Vendor upload file named – Vendor Name 4.2.4.1 Resume]
4.2.4.2 Key Personnel. Describe the key personnel titles and descriptions your firm will assign to service this contract. Outline such personnel qualifications.	
4.2.4.3 R&D Initiatives. Describe your firm's research & development (R&D) initiatives.	
<b>4.2.5. Security</b>	
4.2.5.1 Security. Describe how your firm ensures the security of your equipment and services are maintained against industry standards.	
4.2.5.2 Industry Security. Describe your firms approach in complying with industry standards for: patching, vulnerability testing, etc.	
4.2.5.3 Vulnerabilities. Identify any known circumstances where a vulnerability in any of your products has resulted in a data breach for an end user.	
<b>4.2.6. Environmental</b>	
4.2.6.1 Environmental. Describe your use of environmentally preferable goods and services, including post-consumer waste and recycled content.	
4.2.6.2 Product Lifecycle. Describe your product life recycling and trade-in program.	

## ATTACHMENT B.2 CATEGORY QUALIFICATIONS (as amended August 23, 2018)

Per RFP Section 4.3, Category Qualifications, Offeror's **must** complete this Attachment for each Product Category it is seeking an award in.

Provide the information requested below detailing how your organization has the ability to service the given Product Category. Do not submit a full catalog here in this section or generic literature. Submit information specific to the characteristics listed below. Offerors are required to submit a point by point response to the following items, for EACH Product Category Offeror is seeking an award.

Vendor Name: [vendor input]

Award Category Seeking Qualification: [vendor input]

Information Sought	Vendor Response
<b>4.3.1 Ability to meet Scope/Service Requirements of Selected Category</b>	
<u>4.3.1.1 Scope/Service Requirements.</u> Demonstrate your ability to meet Scope/Service requirements for this category.	
<u>4.3.1.2 Scope Offered.</u> Describe the scope and variety of products offered.	
<u>4.3.1.3 Experience.</u> Describe your experience and technical ability as an OEM to service this category.	
<u>4.3.1.4 Warranty Program.</u> Describe your offered Service and Warranty Program.	
<u>4.3.1.5 Product Life Cycle.</u> Describe your product life cycle management.	
<u>4.3.1.6 Solution Models.</u> Describe the models proposed for delivering the solution (Software Defined Networks (SDN), white boxes, etc.)	
<u>4.3.1.7 Innovation.</u> Describe any differentiating or highly innovative features of the products and services.	
<b>4.3.2 Consumption Models</b>	
<u>4.3.2.1 Consumption Models.</u> Describe your offered consumption models (i.e., purchase / CAPX model, communication infrastructure as-a-service, etc.	
<b>4.3.3 Category Specific Security</b>	
<u>4.3.3.1 Security Standards.</u> Describe the security standards your firm's equipment and services comply with in the industry.	
<u>4.3.3.2 3<sup>rd</sup> Party Security Assessments.</u> Describe any 3 <sup>rd</sup> party security assessments or certifications provided on your offerings.	
<b>4.3.4 Open Standards and Interoperability</b>	

4.3.4.1 Open Standards. Describe any open standards of your equipment.	
4.3.4.2 Cloud Security Assessments. If Offeror is proposing a Cloud hosted solution, Offeror is to complete, provide, and maintain a completed CSA STAR Registry Self-Assessment <sup>1</sup> . Offeror is to submit a completed Consensus Assessments Initiative Questionnaire (CAIQ), <b>Exhibit 1 to Attachment B.2</b> . Offeror must also represent and warrant the accuracy and currency of the information on the completed attachments.	[Vendor upload file named – Vendor Name 4.3.4.2 Cloud Security Assessments]
4.3.4.3 Cloud Security Alliance. If Offeror is proposing a Cloud hosted solution, describe and provide your level of disclosure with CSA Star Registry for each Category seeking qualification.	
4.3.4.4 Interoperability. Describe the interoperability of your equipment and services to other OEMs.	
<b>4.3.5 Value Added Services</b>	
4.3.5.1 Value Added Services. Describe any additional value added services you offer under this Award Category.	
4.3.5.2 IoT Solutions. Describe any IoT products that you offer under this Award Category.	
4.3.5.3 Acceptance Testing / Procedures. Please provide your acceptance and testing procedures available to Purchasing Entities for this Category. Provide your standard of performance for this Category.	

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<sup>1</sup> CSA STAR Self-Assessment documents the security controls provided by an Offeror's offerings, thereby helping Purchasing Entities assess the security of an Offeror, if awarded a Master Agreement, they currently use or are considering using.

## ATTACHMENT C CONTRACT MANAGER RESUME TEMPLATE

<b>Vendor Name:</b>	
<b>Proposed Resource Name:</b>	
<b>Proposed Classification:</b>	<b>Contract Manager</b>
<b>If Contract Manager is associated with a subcontractor provide name of company:</b>	
<b>Percentage of time Contract Manager will be allocated to resulting master agreement:</b>	

**Instructions:** Provide the skills, experience, education, etc. that qualify the individual for the duties and responsibilities outlined in this RFP for a contract manager.

### EXPERIENCE & QUALIFICATIONS

The experience requirements detailed in the RFP are restated as follows:

<b>Required Skills</b>	<b>Bidder's Response</b>
<i>Minimum 2 years' experience in contract management with public sector clients.</i>	<b>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Describe your skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>
<i>Minimum 2 years' experience in leadership roles overall, and</i>	<b>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>
<i>Minimum 2 years' experience in the Data Communications Products and Services industry.</i>	<b>Does Contract Manager have this required skill: Yes <input type="checkbox"/> or No <input type="checkbox"/></b>  <b>Description of skills and experience:</b>  <b>Name of project(s) and year(s) experience was obtained:</b>

### ADDITIONAL SKILLS

Describe any other relevant experiences that qualify your contract manager to perform the responsibilities under this contract:

--

## ATTACHMENT C

### CONTRACT MANAGER RESUME TEMPLATE

List client references for work performed to meet the requirements stated above, and all projects the proposed Contract Manager has worked on in the last three (3) years. A minimum of three (3) references are required. By submission of this information, the bidder and identified key person authorize the State of Utah to contact references and previous employers provided to verify the accuracy of the information. Provide the identified information for each:

Start Date: <i>date started on project</i>	End Date: <i>date rolled off project</i>
Client/Project: <i>Client, with contact information (i.e.: address, phone #s , and email address), and project name</i>	
Employer: <i>identify employer at the time of experience</i>	
Title/Percentage of time: <i>title of role on project and percentage of time spent on project</i>	
Description: <i>brief description of responsibilities for the project. Include software version</i>	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

Start Date:	End Date:
Client/Project:	
Employer:	
Title/Percentage of time:	
Description:	

#### EDUCATION

Education		
Degree (i.e. PhD, Master's, Bachelors)	Example: <i>Master in Engineering</i>	Year Completed: <i>1998</i>
Program	Major(s) area of study: <i>Computer Science</i>	
University		

Additional Education		
Degree (i.e. PhD, Master's, Bachelors)	Example: <i>Bachelors' in Business Administration</i>	Year Completed: <i>1994</i>
Program	Major(s) area of study: <i>Example: Management</i>	Minor area of study: <i>Example: Economics</i>
University		

**CERTIFICATIONS / AFFILIATIONS** – Provide any relevant certifications or affiliations the Contract Manager may have.

Certifications/Affiliations	
Name	
Topic/Description	
Date completed	

The Bidder must submit a letter of commitment for Key Personnel, signed by the identified resource, stating their commitment to work for the bidder/subcontractor on this project contingent on award of the bid.

Solicitation # SK18001

Vendor Name:

[illegible]

# Attachment E Cost Proposal Form (amended 8.9.2018)

Solicitation # SK18001

Vendor Name

## Section 1: Instructions

1. Offeror shall provide a Minimum Discount % within Section 2 for each Category it is seeking an award in. A vendor will be deemed non-responsive for any Category that it does not provide a Minimum Discount % of at least greater than 0%.
2. If you are not seeking an award in a given Category, simply provide NA in the Minimum Discount % field.
3. The offered Minimum Discount % off must be guaranteed for the full duration of the Contract term.
4. The Minimum Discount % provided herein shall apply to all offerings in a given category.
5. In a separate document, provide a detailed product offering for each Category Offeror is seeking an award in. Title this document - Solicitation # Vendor Name - Detailed Product Offering. Offeror's proposed Minimum Discount % for a given Category must be reflected on all offerings within this offered catalog.
6. Within Section 3, provide the rates for those Value Added Services Offeror is seeking to offer under the resulting contract. Within the Job Description field, provide the role this position fills, and what is included within the proposed rate.

Section 2: Minimum Discount % off List	
<b>Category 1.1 Unified Communications (UC)</b>	<b>0.00%</b>
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
<b>Category 1.2 Networking</b>	<b>0.00%</b>
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
<b>Category 1.3 Routers, Switches, Security, and Networking Storage</b>	<b>0.00%</b>
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
<b>Category 1.4 Wireless</b>	<b>0.00%</b>
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	
<b>Category 1.5 Facility Management, Monitoring, and Control</b>	<b>0.00%</b>
Hardware and Software (on premise)	
Cloud Services	
Service Packages (i.e., Maintenance, etc.)	

## Section 3: Value Added Services

Provide the title, job description for each title, and associated hourly rate. Add additional rows as necessary.

		Hourly Rates					
		Weekday		Weekend		State Holiday	
Title	Job Description	Onsite	Remote	Onsite	Remote	Onsite	Remote
Maintenance Services							
Professional Services							
Deployment Services							
Consulting Advisory Services							
Architectural Design Services							
Statement of Work Services							
Partner Services							
Training Deployment Services							
[add any additional Value Added Services]							
[add any additional Value Added Services]							
[add any additional Value Added Services]							
[add any additional Value Added Services]							

**Attachment F - Interactive Scorecard  
Data Communications Products and Services  
SOLICITATION # SK18001  
RFP EVALUATION SCORESHEET**

**DRAFT:** This document is intended to be a draft and should not be returned to the Division of Purchasing. Please return this document to the evaluation committee chairperson. This document is not subject to GRAMA pursuant to Utah Administrative Code R33-7-702(2).

**Score will be assigned as follows:**

- 1 = Fail, the proposal fails to address some or all of the requirements; fails to accurately address some or all of the requirements, or fails to demonstrate they can perform.  
2 = Unsatisfactory, the proposal addresses the requirements or criteria in the RFP unsatisfactorily.  
3 = Satisfactory, the proposal addresses all requirements or criteria in the RFP satisfactorily.  
4 = Good, the proposal addresses all requirements or criteria in the RFP and may exceed some.  
5 = Excellent, the proposal addresses all requirements in the RFP and exceeds them.

**Firm Name:** \_\_\_\_\_

**Evaluator:** \_\_\_\_\_

**Date:** \_\_\_\_\_

Stage 1: Minimum Mandatory Requirements		RFP Section	Evaluation (Pass/Fail)
1	Acknowledgement of Amendments	SciQuest: Questions > Acknowledgements	
2	RFP Development	4.1.1	
3	Evaluation of Proposals	4.1.2	
4	Proposed Categories	4.1.3	
5	Delivery	4.1.4	
6	Credit Rating	4.1.5	
7	OEMs Only	4.1.6	

Stage 2: OEM Evaluated Qualifications		RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1	Company Profile and References	4.2.1		10	20.0%	50.0	0.0	
2	Ability to Supply NASPO ValuePoint Member States	4.2.2		10	20.0%	50.0	0.0	
3	Ability to Provide Technical Support to End Users	4.2.3		10	20.0%	50.0	0.0	
4	Qualifications and Technical Ability	4.2.4		5	10.0%	25.0	0.0	
5	Security	4.2.5		10	20.0%	50.0	0.0	
6	Environmental	4.2.6		5	10.0%	25.0	0.0	
					<b>100.0%</b>	<b>250.0</b>	<b>0.0</b>	<b>0.0</b>

Stage 2: Required Technical Point Threshold		RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
			65%	162.5	0.0	0.0%	

Stage 3: Category Evaluation (Per Category)		RFP Section	Evaluator Score (1-5)	Criteria Weight	% of Tech Criteria	Points Possible	Points Earned	Minimum Required
1	Ability to meet Scope/Service Requirements of Selected Category	4.3.1		20	40.0%	100.0	0.0	
2	Consumption Models	4.3.2		5	10.0%	25.0	0.0	
3	Category Specific Security	4.3.3		10	20.0%	50.0	0.0	
4	Open Standards and Interoperability	4.3.4		10	20.0%	50.0	0.0	
5	Value Added Services	4.3.5		5	10.0%	25.0	0.0	
					<b>100.0%</b>	<b>250.0</b>	<b>0.0</b>	<b>0.0</b>

Stage 3: Required Technical Point Threshold		RFP Section	Min Percent	Min Points Required	Points Earned	Percent Earned	Evaluation
			70%	175.0	0.0	0.0%	

Stage 4: Cost Proposal Evaluation		RFP Section	Low Cost Option	Offered Cost	Percent of Total	Points Possible	Points Earned
					25%	166.7	0.0

\* Purchasing will use the following cost formula: The points assigned to each offerors cost proposal will be as outlined in section 3.2 "Final Stage: Cost Proposal Evaluation".

Total Evaluation Points	Percent of Total	Points Possible	Points Earned
Stage 2: OEM Evaluated Qualifications	38%	250.0	0.0
Stage 3: Category Evaluation	38%	250.0	0.0
Stage 4: Cost Evaluation Points	25%	166.7	0.0
<b>Total Evaluation Points</b>	<b>100%</b>	<b>666.7</b>	<b>0.0</b>



### **CLAIM OF BUSINESS CONFIDENTIALITY**

Pursuant to Utah Code Annotated, Subsections 63G-2-305(1) and (2), and in accordance with Section 63G-2-309, \_\_\_\_\_ (company name) asserts a claim of business confidentiality to protect the following information submitted as part of this solicitation. Pricing/Cost Proposals may not be classified as confidential or protected and will be considered public information. **An entire proposal cannot be identified as “PROTECTED”, “CONFIDENTIAL” or “PROPRIETARY”.**

- ☐ Non-public financial statements
- ☐ Specific employee name and contact information
- ☐ Specific customer information, client lists, or subscription lists
- ☐ Other (specify): \_\_\_\_\_

This claim is asserted because this information requires protection as it includes:

☐ trade secrets as defined in Utah Code Annotated Section 13-24-2 ("Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy).

☐ commercial information or non-individual financial information obtained from a person if: (a) disclosure of the information could reasonably be expected to result in unfair competitive injury to the person submitting the information or would impair the ability of the governmental entity to obtain necessary information in the future; [and] (b) the person submitting the information has a greater interest in prohibiting access than the public in obtaining access.

This statement of reasons supporting the claim of business confidentiality applies to the following information in this proposal:

Page	Paragraph	Reason

Please use additional sheets if needed.

You will be notified if a record claimed to be protected herein under Utah Code Annotated § 63G-2-305(1) or (2) is classified public or if the governmental entity determines that the record should be released after weighing interests under Utah Code Annotated § 63G-2-201(5)(b) or Utah Code Annotated § 63G-2-401(6). See Utah Code Annotated § 63G-2-309.

Signed: \_\_\_\_\_  
On behalf of (company): \_\_\_\_\_  
Date: \_\_\_\_\_

(Revision 6/4/2015)

**Contractor:**

Quarter:

☐ No Quarterly Sales

Vendor Contract		Customer	Bill to	Bill to	Ship to	Ship to	Ship to	Order	Customer	Customer	Order Type	PO Date	Ship Date	Invoice	Invoice	Awarded	Product	Product	UNSPSC	List	NASPO	Energy Star								
Vendor Name	Number	State	Type	Bill to Name	Address	Bill to City	Zipcode	Ship to Name	Address	Ship to City	Ship to Zipcode	Order Number	Customer PO Number	Customer Number	Order Type	PO Date	Ship Date	Invoice Date	Invoice Number	Awarded Category #	Product Number	Product Description	UNSPSC Commodity	List Price/MSRP	NASPO Value/Point	Compliant	VAR/Reseller/Partn	Yes-No-2		
																									Price	Quantity	Total Price	Admin Fee	er/Distributor	NAME

### Attachment I: Intent to Participate

**States with an Intent to Participate.** The States listed below have submitted and signed the Intent to Participate form to the State of Utah under this Data Communications Products and Services RFP (solicitation # SK18001). Some of these States have attached additional information, including state specific terms and conditions that need to be posted as part of this RFP. The below listed States reserve the right to modify the terms and conditions of any awarded Master Agreement in a Participating Addendum.

California	Colorado
Florida	Hawaii
Illinois	Louisiana
Michigan	Montana
New Jersey	South Dakota
Utah	Washington
<b>Amended into RFP After Release</b>	
Minnesota	Maryland
Oregon	



**NASPO ValuePoint  
INTENT TO PARTICPATE  
Cooperative Contract(s) for**

**Data Communications Products & Services (2019-2024)**

**I. PURPOSE**

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

**II. SCOPE OF THE CONTRACT(S)**

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

**III. TERM OF THE CONTRACT**

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

**IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION**

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

*State Specific Terms and Conditions:* If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Annual Estimated Volume:* If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

<b>Annual State Spend</b>	Not Available
<b>Annual Political Subdivision Spend</b>	Not Available
<b>Total Spend</b>	Approximately \$62 million

**State of** California

Angela Shell  
**Director Name**

<u>(916) 375-4417</u>	<u>Angela.Shell@dgs.ca.gov</u>
<b>Director Phone</b>	<b>Director Email</b>

**Director has approved ITP to be submitted?**      Yes ☒    No ☐  
(Click appropriate box)

**State Specific T&Cs to be included in RFP?**      Yes ☒    No ☐  
(Click appropriate box)

Julie Matthews, Contract Administrator  
**State Point of Contact Name and Title**

<u>(916) 375-4612</u>	<u>julie.matthews@dgs.ca.gov</u>
<b>Phone</b>	<b>Email</b>

Please email completed “Intent to Participate” document by **Tuesday, July 10, 2018** to:

**Shannon Berry**  
Cooperative Development Coordinator  
NASPO ValuePoint  
[sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org)

Terms and conditions listed below will be incorporated and made a part of California Participating Addenda. The State of California reserves the right to add additional terms and conditions to individual Participating Addenda.

**A. Terms**

1. Information Technology (IT) General Provisions – GSPD401IT, effective 09/05/14.  
Document can be viewed at:  
[http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14\\_0905.pdf](http://www.documents.dgs.ca.gov/pd/poliproc/GSPD401IT14_0905.pdf).
2. Cloud Computing Special Provisions for Software as a Service (SaaS), effective 03/15/18.  
Document can be viewed at:  
[http://www.documents.dgs.ca.gov/pd/poliproc/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS\\_18\\_0301.docx](http://www.documents.dgs.ca.gov/pd/poliproc/CLOUDCOMPUTINGSERVICESPECIALPROVISIONS_18_0301.docx)

**B. Administrative Fee**

Contractor shall submit a check, payable to the State of California, remitted to the Cooperative Agreement Unit for the calculated amount equal to one percent (0.01) of the sales for the quarterly period.

Contractor must include the Participating Addendum Number on the check. Those checks submitted to the State without the Participating Addendum Number will be returned to Contractor for additional identifying information.

Administrative fee checks shall be submitted to:

State of California  
Department of General Services, Procurement Division  
Attention: Cooperative Agreement Payment Processing  
707 3rd Street, 2nd Floor, MS 2-202  
West Sacramento, CA 95605

The administrative fee shall not be included as an adjustment to Contractor's NASPO ValuePoint Master Agreement pricing.

The administrative fee shall not be invoiced or charged to the ordering agency.

Payment of the administrative fee is due irrespective of payment status on orders or service contracts from a purchasing entity.

Administrative fee checks are due for each quarter as follows:

Reporting Period			Due Date
JAN 1	to	MAR 31	APR 30
APR 1	to	JUN 30	JUL 31
JUL 1	to	SEP 30	OCT 31
OCT 1	to	DEC 31	JAN 31

Failure to meet administrative fee requirements and submit fees on a timely basis shall constitute grounds for suspension of the Participating Addendum.

## PARTICIPATING ADDENDUM

(hereinafter "Addendum")

For

**NASPO VALUEPOINT** Add description of goods & services

**MASTER AGREEMENT NO.** Add contract no.

(hereinafter "Master Agreement")

Between

Insert Contractor Name

(hereinafter "Contractor")

and

State of Hawaii

(hereinafter "Participating State")

**State of Hawaii, State Procurement Office (SPO) Price List Contact No.** add PL No.

This Addendum will add the State of Hawaii as a Participating State to purchase from the NASPO ValuePoint Master Agreement Number insert contract number with insert contractor name.

1. Scope:

This addendum covers NASPO ValuePoint describe services lead by insert lead State for use by state agencies and other entities located in the Participating State authorized by the state's statutes to utilize state contracts.

2. Participation:

All jurisdictions located within the State of Hawaii, which have obtained prior written approval by its Chief Procurement Officer, will be allowed to purchase from the Master Agreement. Private nonprofit health or human services organizations with current purchase of service contracts governed by Hawaii Revised Statutes (HRS) chapter 103F are eligible to participate in the SPO price/vendor list contracts upon mutual agreement between the Contractor and the non-profit. (Each such participating jurisdiction and participating nonprofit is hereinafter referred to as a "Participating Entity"). Issues of interpretation and eligibility for participation are solely within the authority of the Administrator, State Procurement Office.

3. Changes: Replace with specific changes or statements that no changes are required

A. Usage Reports. Contractor shall submit a quarterly gross sales report (including zero dollar sales) in EXCEL to the contact person listed in the Participating Addendum, Paragraph 6 (or as amended) in accordance with the following schedule (or as requested):

<u>Quarter Ending</u>	<u>Report Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

The report shall identify each transaction and include the following information:

Department/Agency Name  
Date of Purchase  
Product/Service Description  
Quantity  
Unit of Measure  
Item No. Part Number (if applicable)  
MSRP List Price  
NASPO ValuePoint Contract Price

The quarterly report shall also include any adjustment from prior periods (i.e. exchanges and/or return).

- B. The validity of this Addendum, any of its terms or provisions, as well as the right and duties of the parties in this Addendum, shall be governed by the laws of the State of Hawaii. A copy of the Attorney General's General Conditions, which is made a part of this Addendum, can be found at <http://spo.hawaii.gov/wp-content/uploads/2014/02/103D-General-Conditions.pdf>. Any action at law or in equity to enforce or interpret the provisions of this Addendum shall be brought in a court of competent jurisdiction in Honolulu, Hawaii.
- C. Inspection of Facilities. Pursuant to HRS § 103D-316, the Participating State, at reasonable times, may inspect the part of the plant or place of business of the Contractor or any subcontractor that is related to the performance of a Master Agreement and this Addendum.
- D. Campaign Contributions. The Contractor is notified of the applicability of HRS § 11-355, which prohibits campaign contributions from Contractor during the term of the Addendum if the contractor is paid with funds appropriated by the Hawaii State Legislature.
- E. Purchases by State of Hawaii government entities under this Master Agreement is not mandatory. This Addendum is secondary and non-exclusive.
- F. The State of Hawaii's purchasing card (pCard) is required to be used by the State's executive departments/agencies (excluding the Department of Education, the Hawaii Health System Corporation, the Office of Hawaiian Affairs, and the University of Hawaii) for all orders totaling less than \$2,500. For purchases of \$2,500 or more, agencies may use the pCard, subject to its credit limit or issue a purchase order.

Contractor(s) shall forward original invoice(s), directly to the ordering agency. General excise tax shall not be applied to the delivery charge.

Pursuant to HRS § 103-10, Participating State and any agency of the Participating State or any county, shall have thirty (30) calendar days after receipt of invoice or satisfactory delivery of goods to make payment. Any interest for delinquent payment shall be as allowed by HRS § 103-10.



- G. Pursuant to HRS §103D-310(c), if Contractor is doing business in the Participating State, Contractor is required to comply with all laws governing entities doing business in the Participating State, including the following HRS chapters.

1. Chapter 237, General Excise Tax Law;
2. Chapter 383, Hawaii Employment Security Law;
3. Chapter 386, Workers' Compensation;
4. Chapter 392, Temporary Disability Insurance;
5. Chapter 393, Prepaid Health Care Act; and

A Certificate of Good Standing is required for entities doing business in the State.

The Hawaii Compliance Express (HCE) is utilized for verification of compliance. The SPO will conduct periodic checks to confirm Contractor's compliance on HCE throughout the term of the Addendum.

Alternatively, Contractors not utilizing HCE to demonstrate compliance shall provide paper certificates to the SPO as instructed below. All certificates must be valid on the date it is received by the SPO. All applications for applicable clearances are the responsibility of the Contractor.

HRS Chapter 237 tax clearance requirement. Pursuant to Section 103D-328, HRS, Contractor shall be required to submit a tax clearance certificate issued by the Hawaii State Department of Taxation (DOTAX) and the Internal Revenue Service (IRS). The certificate shall have an original green certified copy stamp and shall be valid for six (6) months from the most recent approval stamp date on the certificate.

The Tax Clearance Application, Form A-6, and its completion and filing instructions, are available on the DOTAX website: <http://tax.hawaii.gov/forms/>.

HRS Chapters 383 (Unemployment Insurance), 386 (Workers' Compensation), 392 (Temporary Disability Insurance), and 393 (Prepaid Health Care) requirements. Pursuant to Section 103D-310(c) Contractor shall be required to submit a certificate of compliance issued by the Hawaii State Department of Labor and Industrial Relations (DLIR). The certificate is valid for six (6) months from the date of issue. A photocopy of the certificate is acceptable to the SPO.

The DLIR Form LIR#27 Application for Certificate of Compliance with Section 3-122-112, HAR, and its filing instructions are available on the DLIR website: <http://labor.hawaii.gov/forms/>.

Compliance with Section 103D-310(c), HRS, for an entity doing business in the State. Contractor shall be required to submit a Certificate of Good Standing (COGS) issued by the State of Hawaii Department of Commerce and Consumer Affairs (DCCA) – Business Registration Division (BREG). The Certificate is valid for six (6) months from date of issue. A photocopy of the certificate is acceptable to the SPO.

To obtain the Certificate, the Offeror must be registered with the BREG. A sole proprietorship is not required to register with the BREG and is therefore not required to submit the certificate.

For more information regarding online business registration and the COGS is available at <http://cca.hawaii.gov/breg/>.

H. Effective Date and Contract Period. This Addendum is effective upon the date of execution by the Participating State and shall continue for the term set forth in the Master Agreement.

4. Licensing

Offerors(Bidders) and Contractors must be properly licensed and capable of performing the Work as described in the RFP(IFB), at the time of submission of the Proposal(Bid), in accordance with the Professional and Vocational licensing laws of the state. Contractors under Participating Addendums must maintain any and all required licenses through the duration of the contract and Participating Addendum.

5. Lease Agreements:

Leasing is not authorized by this Addendum

6. Primary Contact:

The primary contact individuals for this Addendum are as follows (or their named successors:

Participating State

Name: Name of purchasing specialist  
Address: State Procurement Office  
1151 Punchbowl Street, Room 416  
Honolulu, HI 96813  
Telephone: phone number  
Fax: (808) 586-0570  
E-Mail: specialist e-mail address

Contractor

Name:  
Address:  
Telephone:  
Fax:  
E-Mail:

7. Subcontractors:

Subcontractors are (or are not) allowed under this Addendum.

8. Freight Charges (unless otherwise stated in the master contract):

Prices proposed will be the delivered price to any state agency or political subdivision. All deliveries will be F.O.B. destination with all transportation and handling charges paid by the Contractor. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Buyer except as to latent defects, fraud, and Contractor's warranty obligations. Any portion of a full order originally shipped without transportation charges (that failed to ship with the original order, thereby becoming back-ordered) will also be shipped without transportation charges.

9. Purchase Order and Payment Instructions:

All purchase orders issued by Participating Entities under this Addendum shall include the Participating State contract number: SPO Price List Contract No. 16-07 and the NASPO ValuePoint Master Agreement Number 06913.

- Purchase Orders and Payments shall be made to **add contractor name** or authorized subcontractors, if any.

10. Participating Entity as Individual Customer:

Each Participating Entity shall be treated as an individual customer. Except to the extent modified by this Addendum, each Participating Entity will be responsible to follow the terms and conditions of the Master Agreement; and will have the same rights and responsibilities for their purchases as the Lead State has in the Master Agreement. Each Participating Entity will be responsible for its own charges, fees, and liabilities. Each Participating Entity will have the same rights to any indemnity or to recover any costs allowed in the Master Agreement for their purchases. The Contractor will apply the charges to each Participating Entity individually.

11. Entire Contract:

This Addendum, the Master Agreement, and the Attorney General's General Conditions, set forth the entire agreement, and all the conditions, understandings, promises, warranties and representations among the parties with respect to this Addendum and the Master Agreement, and supersedes any prior communications, representations or agreements whether, oral or written, with respect to the subject matter hereof.

Terms and conditions inconsistent with, contrary or in addition to the terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions that are included in any purchase order or other document shall be void. The terms and conditions of this Addendum, the Master Agreement, and the Attorney General's General Conditions, shall govern in the case of any such inconsistent, contrary, or additional terms.

IN VIEW OF THE ABOVE, the parties execute this Addendum by their signatures, on the dates below.

Participating State: STATE OF HAWAII	Contractor:
Signature:	Signature:
Name: SARAH ALLEN	Name:
Title: Administrator, SPO	Title:
Date:	Date:

**APPROVED AS TO FORM:**

---

Deputy Attorney General

1. Participating Addendum executed by the State of Illinois will be designated as available to governmental units in Illinois. "Governmental unit" means State of Illinois, any State agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), officers of the State of Illinois, any public authority which has the power to tax, or any other public entity created by statute. 30ILCS 525/.
2. In no event will the total term of any Participating Addendum, including the initial term and any extensions or amendments, exceed ten (10) years.
3. This contract and all related public records maintained by, provided to, or required to be provided to the State are subject to the Illinois Freedom of Information Act notwithstanding any provision to the contrary that may be found in this contract. 5 ILCS 140.
4. Any Participating Addendum executed by the State of Illinois is contingent upon and subject to the availability of funds. The State of Illinois, at its sole option, may terminate or suspend any Participating Addendum, in whole or in part, without penalty or further payment being required, if (1) the Illinois General Assembly or the Federal funding source fails to make an appropriation sufficient to pay such obligation, or if funds needed are insufficient for any reason (30 ILCS 500/20-60), (2) the Governor of Illinois decreases the Agency's funding by reserving some or all of the Agency's appropriation(s) pursuant to power delegated to the Governor by the Illinois General Assembly, that a reduction is necessary or advisable based upon actual or projected budgetary considerations. Vendor will be notified in writing of the failure of appropriation or of a reduction or decrease.
5. Any claim against any State of Illinois, any State of Illinois agency as defined in Section 1-15.100 of the Illinois Procurement Code (30 ILCS 500/), or officers of the State of Illinois arising out of any Participating Addendum must be filed exclusively with the Illinois Court of Claims. 705 ILCS 505/1. Payments, including late payment charges, will be paid in accordance with the State Prompt Payment Act and rules when applicable. 30 ILCS 540; 74 Ill. Adm. Code 900. This shall be Vendor's sole remedy for late payments by the State of Illinois. Payment terms contained in Vendor's invoices shall have no force or effect. The State of Illinois shall not enter into binding arbitration to resolve any dispute arising out of any Participating Addendum. The State of Illinois does not waive sovereign immunity.
6. Illinois may further evaluate the lead state's awarded contracts to make best value determinations.
7. Registration in the Illinois Procurement Gateway is required before a Participating Addendum with the State of Illinois may be executed. For information on registration, please visit [www.ipg.vendorreg.com](http://www.ipg.vendorreg.com).
8. Registration in BidBuy is required before a contract with the State of Illinois can be executed. For information on registration, please see the BidBuy [Vendor Registration Manual](#).



**NASPO ValuePoint  
INTENT TO PARTICPATE  
Cooperative Contract(s) for**

**Data Communications Products & Services (2019-2024)**

**I. PURPOSE**

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

**II. SCOPE OF THE CONTRACT(S)**

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

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**III. TERM OF THE CONTRACT**

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

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The solicitation will permit multiple awards.

Additional Requested Information

*State Specific Terms and Conditions:* If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Annual Estimated Volume:* If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

**Annual State Spend** \$13,000,000

**Annual Political Subdivision Spend** included

**Total Spend** included

**State of** Montana

Meghan Holmlund

**Director Name**

406-444-1459

**Director Phone**

mholmlund@mt.gov

**Director Email**

**Director has approved ITP to be submitted?** Yes ☒ No ☐  
(Click appropriate box)

**State Specific T&Cs to be included in RFP?** Yes ☒ No ☐  
(Click appropriate box)

Tia Snyder

**State Point of Contact Name and Title**

406-444-3315

**Phone**

tsnyder@mt.gov

**Email**

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

**Shannon Berry**

Cooperative Development Coordinator

NASPO ValuePoint

[sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org)

## State Terms and Conditions

**ACCESS AND RETENTION OF RECORDS:** Contractor agrees to provide the department, Legislative Auditor, or their authorized agents, access to any records necessary to determine contract compliance. (Section 18-1-118, MCA). Contractor agrees to create and retain records supporting the services rendered or supplies delivered for a period of eight years after either the completion date of the contract or the conclusion of any claim, litigation, or exception relating to the contract taken by the State of Montana or third party.

**ASSIGNMENT, TRANSFER AND SUBCONTRACTING:** Contractor shall not assign, transfer or subcontract any portion of the contract without the express written consent of the department. (Section 18-4-141, MCA.)

**COMPLIANCE WITH LAWS:** Contractor shall, in performance of work under this Contract, fully comply with all applicable federal, state, or local laws, rules, regulations, and executive orders including but not limited to, the Montana Human Rights Act, the Equal Pay Act of 1963, the Civil Rights Act of 1964, the Age Discrimination Act of 1975, the Americans with Disabilities Act of 1990, and Section 504 of the Rehabilitation Act of 1973. Contractor is the employer for the purpose of providing healthcare benefits and paying any applicable penalties, fees and taxes under the Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119]. Any subletting or subcontracting by Contractor subjects subcontractors to the same provisions. In accordance with 49-3-207, MCA, and Executive Order No. 04-2016 Contractor agrees that the hiring of persons to perform this Contract will be made on the basis of merit and qualifications and there will be no discrimination based on race, color, sex, pregnancy, childbirth or medical conditions related to pregnancy or childbirth, political or religious affiliation or ideas, culture, creed, social origin or condition, genetic information, sexual orientation, gender identity or expression, national origin, ancestry, age, disability, military service or veteran status, or marital status by the persons performing this Contract.

**HOLD HARMLESS/INDEMNIFICATION:** Contractor agrees to protect, defend, and save the State, its elected and appointed officials, agents, and employees, while acting within the scope of their duties as such, harmless from and against all claims, demands, causes of action of any kind or character, including the cost of defense thereof, arising in favor of Contractor's employees or third parties on account of bodily or personal injuries, death, or damage to property arising out of services performed or omissions of services or in any way resulting from the acts or omissions of Contractor and/or its agents, employees, representatives, assigns, subcontractors, except the sole negligence of the State, under this agreement.

**REDUCTION OF FUNDING:** State must by law terminate this Contract if funds are not appropriated or otherwise made available to support State's continuation of performance of this Contract in a subsequent fiscal period. (18-4-313(4), MCA) If state or federal government funds are not appropriated or otherwise made available through the state budgeting process to support continued performance of this Contract (whether at an initial contract payment level or any contract increases to that initial level) in subsequent fiscal periods, State shall terminate this Contract as required by law. State shall provide Contractor the date State's termination shall take effect. State shall not be liable to Contractor for any payment that would have been payable had the Contract not been terminated under this provision. As stated above, State shall be liable to Contractor only for the payment, or prorated portion of that payment, owed to Contractor up to the date State's termination takes effect. This is Contractor's sole remedy. State shall not be liable to Contractor for any other payments or damages arising from termination under this section, including but not limited to general, special, or consequential damages such as lost profits or revenues.

**VENUE:** This solicitation is governed by the laws of Montana. The parties agree that any litigation concerning this bid, request for proposal, limited solicitation, or subsequent contract, must be brought in the First Judicial District in and for the County of Lewis and Clark, State of Montana, and each party shall pay its own costs and attorney fees. (Section 18-1-401, MCA.)

**TAX EXEMPTION:** State of Montana is exempt from Federal Excise Taxes (#81-0302402) except as otherwise provided in the federal Patient Protection and Affordable Care Act [P.L. 111-148, 124 Stat. 119].

**STATE OF MONTANA ADMINISTRATIVE FEE:** The State of Montana assesses an Administrative Fee of one and one-half percent (1.50%) for all net sales (sales less credits and returns) made under this PA. The prices



paid to Contractor must include the 1.5% Administrative Fee. The Contractor shall remit this Administrative Fee concurrent with the Required Usage Reporting described below. The Administrative Fee must be submitted by ACH along with email notification to the State of Montana Contracts Officer. This Administrative Fee is effective upon execution of this Participating Addendum.

**REQUIRED REPORTING:** Contractor shall submit quarterly reports to the Contracts Officer (CO) assigned by the State to manage this contract. Contractor shall provide CO with an electronic usage report (Excel), which must list the following information at the minimum: purchasing entity; description of items purchased; date of purchase; contract price; and the extended price for each transaction. These reports are due no more than 30 days after the end of the quarter.

First Quarter:	July 1 through September 30
Second Quarter:	October 1 through December 31
Third Quarter:	January 1 through March 31
Fourth Quarter:	April 1 through June 30

# **Federal Terms and Conditions (Non-Construction)**

## **1. NONDISCRIMINATION**

The Contractor agrees that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor's performance under this contract, on the ground of race, religion, color, national origin, sex or handicap. Accordingly, and to the extent applicable, the Contractor agrees to comply with the following:

- a. On the basis of race, color or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) as implemented by DoD regulations at 32 CFR part 195.
- b. On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 {3 CFR, 1964-1965 Comp. pg. 339}, as implemented by Department of Labor regulations at 41 CFR part 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.), as implemented by DoD regulations at 32 CFR part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.
- e. On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

## **2. LOBBYING**

a. The Contractor agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the State agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

## **3. DRUG-FREE WORK PLACE**

The Contractor agrees to comply with the requirements regarding drug-free workplace requirements in Subpart B of 32 CFR part 26, which implements sec. 5151-5160 of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

## **4. ENVIRONMENTAL PROTECTION**

a. The Contractor agrees that its performance under this contract shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Solid Waste Disposal Act (SWDA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
- (8) To identify any impact this contract may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Contractor shall also identify to the state any impact this contract may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse

environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help the agency may need to comply with the Coastal Barriers Resource Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking work source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3)

## **5. USE OF UNITED STATES FLAG VESSELS**

a. The Contactor agrees that travel under this contract shall use U.S.-flag air carriers ( air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The Contactor agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

## **6. DEBARMENT AND SUSPENSION**

a. The Contractor shall not make any award or permit any award (sub-contract or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension.

b. The Contractor agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR part 180, as implemented by the DoD in 2 CFR part 1125. The Contractor shall comply with 2 CFR Part 1125 by checking the Excluded Parties List System (EPLS) at [www.sam.gov](http://www.sam.gov) to verify Contractor eligibility to receive contracts and subcontracts resulting from this Agreement. The Contractor shall not solicit offers from, nor award contracts to Contractors listed in EPLS. This verification shall be documented in the Contractor's contract files, and shall be subject to audit by federal/State audit agencies

The Contractor agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the Contractor enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR part 1125.

## **7. BUY AMERICAN ACT**

The Contractor agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10a et seq). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

## **8. UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY POLICES**

The Contractor agrees that it will comply with CFR 49 part 24, which implements the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

## **9. COPELAND "ANTI-KICKBACK" ACT**

The Contractor agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this contract, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

## **10. CONTRACT WORK HOURS AND SAFETY STANDARDS**

The Contractor agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay.

## **11. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

Any discovery or invention that arises during the course of the contract shall be reported to the non-Federal entity. Contractor must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

## **12. CLEAN AIR ACT (42 U.S.C. 7401-7671Q.) AND THE FEDERAL WATER POLLUTION CONTROL ACT (33 U.S.C. 1251-1387), AS AMENDED**

Any Contract or subcontract in excess of \$150,000 must comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the State who in turn will report to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

## **13. BYRD ANTI-LOBBYING AMENDMENT (31 U.S.C. 1352)**

Contractors that bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## **14. PROCUREMENT OF RECOVERED MATERIALS**

Contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

# **State of New Jersey Standard Terms and Conditions**

(Rev: 5/8/18)

## **1. STANDARD TERMS AND CONDITIONS APPLICABLE TO THE CONTRACT**

Unless the bidder/offeror is specifically instructed otherwise in the Request for Proposals (RFP), the following terms and conditions shall apply to all contracts or purchase agreements made with the State of New Jersey. These terms are in addition to the terms and conditions set forth in the RFP and should be read in conjunction with same unless the RFP specifically indicates otherwise. In the event that the bidder/offeror would like to present terms and conditions that are in conflict with either these terms and conditions or those set forth in the RFP, the bidder/offeror must present those conflicts during the Question and Answer period for the State to consider. Any conflicting terms and conditions that the State is willing to accept will be reflected in an addendum to the RFP. The State's terms and conditions shall prevail over any conflicts set forth in a bidder/offeror's Proposal that were not submitted through the question and answer process and approved by the State. Nothing in these terms and conditions shall prohibit the Director of the Division of Purchase and Property (Director) from amending a contract when the Director determines it is in the best interests of the State.

### **1.1 CONTRACT TERMS CROSSWALK**

<b>NJSTART Term</b>	<b>Equivalent Existing New Jersey Term</b>
Bid/Bid Solicitation	RFP/Solicitation
Bid Amendment	Addendum
Change Order	Contract Amendment
Master Blanket Purchase Order (Blanket P.O.)	Contract
Offer and Acceptance Page	Signatory Page
Quote	Proposal
Vendor	Bidder/Contractor

## **2. STATE LAW REQUIRING MANDATORY COMPLIANCE BY ALL CONTRACTORS**

The statutes, laws or codes cited herein are available for review at the New Jersey State Library, 185 West State Street, Trenton, New Jersey 08625.

### **2.1 BUSINESS REGISTRATION**

Pursuant to N.J.S.A. 52:32-44, the State is prohibited from entering into a contract with an entity unless the bidder and each subcontractor named in the proposal have a valid Business Registration Certificate on file with the Division of Revenue and Enterprise Services. A subcontractor named in a bid or other proposal shall provide a copy of its business registration to the bidder who shall provide it to the State.

The contractor shall maintain and submit to the State a list of subcontractors and their addresses that may be updated from time to time with the prior written consent of the Director during the course of contract performance. The contractor shall submit to the State a complete and accurate list of all subcontractors used and their addresses before final payment is made under the contract.

Pursuant to N.J.S.A. 54:49-4.1, a business organization that fails to provide a copy of a business registration, or that provides false business registration information, shall be liable for a penalty of \$25 for each day of violation, not to exceed \$50,000 for each business registration copy not properly provided under a contract with a contracting agency.

The contractor and any subcontractor providing goods or performing services under the contract, and each of their affiliates, shall, during the term of the contract, collect and remit to the Director of the Division of Taxation in the Department of the Treasury, the Use Tax due pursuant to the "Sales and Use Tax Act, P.L. 1966, c. 30 (N.J.S.A. 54:32B-1 et seq.) on all sales of tangible personal property delivered into the State. Any questions in this regard can be directed to the Division of

## **2.2 ANTI-DISCRIMINATION**

All parties to any contract with the State agree not to discriminate in employment and agree to abide by all anti-discrimination laws including those contained within N.J.S.A. 10:2-1 through N.J.S.A. 10:2-4, N.J.S.A. 10:5-1 et seq. and N.J.S.A. 10:5-31 through 10:5-38, and all rules and regulations issued thereunder are hereby incorporated by reference. The agreement to abide by the provisions of N.J.S.A. 10:5-31 through 10:5-38 include those provisions indicated for Goods, Professional Service and General Service Contracts (Exhibit A, attached) and Constructions Contracts (Exhibit B and Executive Order 151, August 28, 2009, attached) as appropriate.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time.

## **2.3 PREVAILING WAGE ACT**

The New Jersey Prevailing Wage Act, N.J.S.A. 34: 11-56.25 et seq. is hereby made part of every contract entered into on behalf of the State of New Jersey through the Division of Purchase and Property, except those contracts which are not within the contemplation of the Act. The bidder's signature on [this proposal] is his/her guarantee that neither he/she nor any subcontractors he/she might employ to perform the work covered by [this proposal] has been suspended or debarred by the Commissioner, Department of Labor and Workforce Development for violation of the provisions of the Prevailing Wage Act and/or the Public Works Contractor Registration Acts; the bidder's signature on the proposal is also his/her guarantee that he/she and any subcontractors he/she might employ to perform the work covered by [this proposal] shall comply with the provisions of the Prevailing Wage and Public Works Contractor Registration Acts, where required.

## **2.4 AMERICANS WITH DISABILITIES ACT**

The contractor must comply with all provisions of the Americans with Disabilities Act (ADA), P.L. 101-336, in accordance with 42 U.S.C. 12101, et seq.

## **2.5 MACBRIDE PRINCIPLES**

The bidder must certify pursuant to N.J.S.A. 52:34-12.2 that it either has no ongoing business activities in Northern Ireland and does not maintain a physical presence therein or that it will take lawful steps in good faith to conduct any business operations it has in Northern Ireland in accordance with the MacBride principles of nondiscrimination in employment as set forth in N.J.S.A. 52:18A-89.5 and in conformance with the United Kingdom's Fair Employment (Northern Ireland) Act of 1989, and permit independent monitoring of their compliance with those principles.

## **2.6 PAY TO PLAY PROHIBITIONS**

Pursuant to N.J.S.A. 19:44A-20.13 et seq. (P.L. 2005, c. 51), and specifically, N.J.S.A. 19:44A-20.21, it shall be a breach of the terms of the contract for the business entity to:

- A. Make or solicit a contribution in violation of the statute;
- B. Knowingly conceal or misrepresent a contribution given or received;
- C. Make or solicit contributions through intermediaries for the purpose of concealing or misrepresenting the source of the contribution;
- D. Make or solicit any contribution on the condition or with the agreement that it will be contributed to a campaign committee or any candidate or holder of the public office of Governor or Lieutenant Governor, or to any State or county party committee;

- E. Engage or employ a lobbyist or consultant with the intent or understanding that such lobbyist or consultant would make or solicit any contribution, which if made or solicited by the business entity itself, would subject that entity to the restrictions of the Legislation;
- F. Fund contributions made by third parties, including consultants, attorneys, family members, and employees;
- G. Engage in any exchange of contributions to circumvent the intent of the Legislation; or
- H. Directly or indirectly through or by any other person or means, do any act which would subject that entity to the restrictions of the Legislation.

## **2.7 POLITICAL CONTRIBUTION DISCLOSURE**

The contractor is advised of its responsibility to file an annual disclosure statement on political contributions with the New Jersey Election Law Enforcement Commission (ELEC), pursuant to N.J.S.A. 19:44A-20.27 (P.L. 2005, c. 271, §3 as amended) if in a calendar year the contractor receives one (1) or more contracts valued at \$50,000.00 or more. It is the contractor's responsibility to determine if filing is necessary. Failure to file can result in the imposition of penalties by ELEC. Additional information about this requirement is available from ELEC by calling 1(888)313-3532 or on the internet at <http://www.elec.state.nj.us/>.

## **2.8 STANDARDS PROHIBITING CONFLICTS OF INTEREST**

The following prohibitions on contractor activities shall apply to all contracts or purchase agreements made with the State of New Jersey, pursuant to Executive Order No. 189 (1988).

No vendor shall pay, offer to pay, or agree to pay, either directly or indirectly, any fee, commission, compensation, gift, gratuity, or other thing of value of any kind to any State officer or employee or special State officer or employee, as defined by N.J.S.A. 52:13D-13b. and e., in the Department of the Treasury or any other agency with which such vendor transacts or offers or proposes to transact business, or to any member of the immediate family, as defined by N.J.S.A. 52:13D-13i., of any such officer or employee, or partnership, firm or corporation with which they are employed or associated, or in which such officer or employee has an interest within the meaning of N.J.S.A. 52:13D-13g;

The solicitation of any fee, commission, compensation, gift, gratuity or other thing of value by any State officer or employee or special State officer or employee from any State vendor shall be reported in writing forthwith by the vendor to the New Jersey Office of the Attorney General and the Executive Commission on Ethical Standards;

No vendor may, directly or indirectly, undertake any private business, commercial or entrepreneurial relationship with, whether or not pursuant to employment, contract or other agreement, express or implied, or sell any interest in such vendor to, any State officer or employee or special State officer or employee having any duties or responsibilities in connection with the purchase, acquisition or sale of any property or services by or to any State agency or any instrumentality thereof, or with any person, firm or entity with which he/she is employed or associated or in which he/she has an interest within the meaning of N.J.S.A. 52:13D-13g. Any relationships subject to this provision shall be reported in writing forthwith to the Executive Commission on Ethical Standards, which may grant a waiver of this restriction upon application of the State officer or employee or special State officer or employee upon a finding that the present or proposed relationship does not present the potential, actuality or appearance of a conflict of interest;

No vendor shall influence, or attempt to influence or cause to be influenced, any State officer or employee or special State officer or employee in his/her official capacity in any manner which might tend to impair the objectivity or independence of judgment of said officer or employee;

No vendor shall cause or influence, or attempt to cause or influence, any State officer or employee or special State officer or employee to use, or attempt to use, his/her official position to secure unwarranted privileges or advantages for the vendor or any other person; and

The provisions cited above in paragraphs 2.8a through 2.8e shall not be construed to prohibit a State officer or employee or Special State officer or employee from receiving gifts from or contracting with vendors under the same terms and conditions as are offered or made available to members of the general public subject to any guidelines the Executive Commission on Ethical Standards may promulgate under paragraph 3c of Executive Order No. 189.

## **2.9 NOTICE TO ALL CONTRACTORS SET-OFF FOR STATE TAX NOTICE**

Pursuant to N.J.S.A. 54:49-19, effective January 1, 1996, and notwithstanding any provision of the law to the contrary, whenever any taxpayer, partnership or S corporation under contract to provide goods or services or construction projects to the State of New Jersey or its agencies or instrumentalities, including the legislative and judicial branches of State government, is entitled to payment for those goods or services at the same time a taxpayer, partner or shareholder of that entity is indebted for any State tax, the Director of the Division of Taxation shall seek to set off that taxpayer's or shareholder's share of the payment due the taxpayer, partnership, or S corporation. The amount set off shall not allow for the deduction of any expenses or other deductions which might be attributable to the taxpayer, partner or shareholder subject to set-off under this act.

The Director of the Division of Taxation shall give notice to the set-off to the taxpayer and provide an opportunity for a hearing within 30 days of such notice under the procedures for protests established under R.S. 54:49-18. No requests for conference, protest, or subsequent appeal to the Tax Court from any protest under this section shall stay the collection of the indebtedness. Interest that may be payable by the State, pursuant to P.L. 1987, c.184 (c.52:32-32 et seq.), to the taxpayer shall be stayed.

## **2.10 COMPLIANCE - LAWS**

The contractor must comply with all local, State and Federal laws, rules and regulations applicable to this contract and to the goods delivered and/or services performed hereunder.

## **2.11 COMPLIANCE - STATE LAWS**

It is agreed and understood that any contracts and/or orders placed as a result of [this proposal] shall be governed and construed and the rights and obligations of the parties hereto shall be determined in accordance with the laws of the State of New Jersey.

## **2.12 WARRANTY OF NO SOLICITATION ON COMMISSION OR CONTINGENT FEE BASIS**

The contractor warrants that no person or selling agency has been employed or retained to solicit or secure the contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except bona fide employees or bona fide established commercial or selling agencies maintained by the contractor for the purpose of securing business. If a breach or violation of this section occurs, the State shall have the right to terminate the contract without liability or in its discretion to deduct from the contract price or consideration the full amount of such commission, percentage, brokerage or contingent fee.

## **3. STATE LAW REQUIRING MANDATORY COMPLIANCE BY CONTRACTORS UNDER CIRCUMSTANCES SET FORTH IN LAW OR BASED ON THE TYPE OF CONTRACT**

### **3.1 COMPLIANCE - CODES**

The contractor must comply with NJUCC and the latest NEC70, B.O.C.A. Basic Building code, OSHA and all applicable codes for this requirement. The contractor shall be responsible for securing and paying all necessary permits, where applicable.

### **3.2 PUBLIC WORKS CONTRACTOR REGISTRATION ACT**

The New Jersey Public Works Contractor Registration Act requires all contractors, subcontractors and lower tier subcontractor(s) who engage in any contract for public work as defined in N.J.S.A.



34:11-56.26 be first registered with the New Jersey Department of Labor and Workforce Development pursuant to N.J.S.A. 34:11-56.51. Any questions regarding the registration process should be directed to the Division of Wage and Hour Compliance at (609) 292-9464.

### **3.3 PUBLIC WORKS CONTRACT - ADDITIONAL AFFIRMATIVE ACTION REQUIREMENTS**

N.J.S.A. 10:2-1 requires that during the performance of this contract, the contractor must agree as follows:

- A. In the hiring of persons for the performance of work under this contract or any subcontract hereunder, or for the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under this contract, no contractor, nor any person acting on behalf of such contractor or subcontractor, shall, by reason of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex, discriminate against any person who is qualified and available to perform the work to which the employment relates;
- B. No contractor, subcontractor, nor any person on his/her behalf shall, in any manner, discriminate against or intimidate any employee engaged in the performance of work under this contract or any subcontract hereunder, or engaged in the procurement, manufacture, assembling or furnishing of any such materials, equipment, supplies or services to be acquired under such contract, on account of race, creed, color, national origin, ancestry, marital status, gender identity or expression, affectional or sexual orientation or sex;
- C. There may be deducted from the amount payable to the contractor by the contracting public agency, under this contract, a penalty of \$50.00 for each person for each calendar day during which such person is discriminated against or intimidated in violation of the provisions of the contract; and
- D. This contract may be canceled or terminated by the contracting public agency, and all money due or to become due hereunder may be forfeited, for any violation of this section of the contract occurring after notice to the contractor from the contracting public agency of any prior violation of this section of the contract.

N.J.S.A. 10:5-33 and N.J.A.C. 17:27-3.5 require that during the performance of this contract, the contractor must agree as follows:

- A. The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will take affirmative action to ensure that such applicants are recruited and employed, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause;
- B. The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex;

C. The contractor or subcontractor where applicable, will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment, N.J.A.C. 17:27-3.7 requires all contractors and subcontractors, if any, to further agree as follows:

1. The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2;
2. The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices;
3. The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job-related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions; and
4. In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

### **3.4 BUILDING SERVICE**

Pursuant to N.J.S.A. 34:11-56.58 et seq., in any contract for building services, as defined in N.J.S.A. 34:11-56.59, the employees of the contractor or subcontractors shall be paid prevailing wage for building services rates, as defined in N.J.S.A. 34:11.56.59. The prevailing wage shall be adjusted annually during the term of the contract.

### **3.5 THE WORKER AND COMMUNITY RIGHT TO KNOW ACT**

The provisions of N.J.S.A. 34:5A-1 et seq. which require the labeling of all containers of hazardous substances are applicable to this contract. Therefore, all goods offered for purchase to the State must be labeled by the contractor in compliance with the provisions of the statute.

### **3.6 SERVICE PERFORMANCE WITHIN U.S.**

Under N.J.S.A. 52:34-13.2, all contracts primarily for services awarded by the Director shall be performed within the United States, except when the Director certifies in writing a finding that a required service cannot be provided by a contractor or subcontractor within the United States and the certification is approved by the State Treasurer.

A shift to performance of services outside the United States during the term of the contract shall be deemed a breach of contract. If, during the term of the contract, the contractor or subcontractor, proceeds to shift the performance of any of the services outside the United States, the contractor shall be deemed to be in breach of its contract, which contract shall be subject to termination for cause pursuant to Section 5.7(b) (1) of the Standard Terms and Conditions, unless previously approved by the Director and the Treasurer.

### **3.7 BUY AMERICAN**

Pursuant to N.J.S.A. 52:32-1, if manufactured items or farm products will be provided under this contract to be used in a public work, they shall be manufactured or produced in the United States and the contractor shall be required to so certify.

## **4. INDEMNIFICATION AND INSURANCE**

### **4.1 INDEMNIFICATION**

The contractor's liability to the State and its employees in third party suits shall be as follows:

- A. Indemnification for Third Party Claims - The contractor shall assume all risk of and responsibility for, and agrees to indemnify, defend, and save harmless the State of New Jersey and its employees from and against any and all claims, demands, suits, actions, recoveries, judgments and costs and expenses in connection therewith which shall arise from or result directly or indirectly from the work and/or materials supplied under this contract, including liability of any nature or kind for or on account of the use of any copyrighted or uncopyrighted composition, secret process, patented or unpatented invention, article or appliance furnished or used in the performance of this contract;
- B. The contractor's indemnification and liability under subsection (a) is not limited by, but is in addition to the insurance obligations contained in Section 4.2 of these Terms and Conditions; and
- C. In the event of a patent and copyright claim or suit, the contractor, at its option, may: (1) procure for the State of New Jersey the legal right to continue the use of the product; (2) replace or modify the product to provide a non-infringing product that is the functional equivalent; or (3) refund the purchase price less a reasonable allowance for use that is agreed to by both parties.

### **4.2 INSURANCE**

The contractor shall secure and maintain in force for the term of the contract insurance as provided herein. All required insurance shall be provided by insurance companies with an A-VIII or better rating by A.M. Best & Company. All policies must be endorsed to provide 30 days' written notice of cancellation or material change to the State of New Jersey at the address shown below. If the contractor's insurer cannot provide 30 days written notice, then it will become the obligation of the contractor to provide the same. The contractor shall provide the State with current certificates of insurance for all coverages and renewals thereof. Renewal certificates shall be provided within 30 days of the expiration of the insurance. The contractor shall not begin to provide services or goods to the State until evidence of the required insurance is provided. The certificates of insurance shall indicate the contract number or purchase order number and title of the contract in the Description of Operations box and shall list the State of New Jersey, Department of the Treasury, Division of Purchase & Property, Contract Compliance & Audit Unit, P.O. Box 236, Trenton, New Jersey 08625 in the Certificate Holder box. The certificates and any notice of cancelation shall be emailed to the State at:

[ccaau.certificate@treas.nj.gov](mailto:ccaau.certificate@treas.nj.gov)

The insurance to be provided by the contractor shall be as follows:

- A. Occurrence Form Commercial General Liability Insurance or its equivalent: The minimum limit of liability shall be \$1,000,000 per occurrence as a combined single limit for bodily injury and property damage. The above required Commercial General Liability Insurance policy or its equivalent shall name the State, its officers, and employees as "Additional Insureds" and include the blanket additional insured endorsement or its equivalent. The coverage to be provided under these policies shall be at least as broad as that provided by the standard basic Commercial General Liability Insurance occurrence coverage forms or its equivalent

currently in use in the State of New Jersey, which shall not be circumscribed by any endorsement limiting the breadth of coverage;

- B. Automobile Liability Insurance which shall be written to cover any automobile used by the insured. Limits of liability for bodily injury and property damage shall not be less than \$1,000,000 per occurrence as a combined single limit. The State must be named as an "Additional Insured" and a blanket additional insured endorsement or its equivalent must be provided when the services being procured involve vehicle use on the State's behalf or on State controlled property;
  - C. Worker's Compensation Insurance applicable to the laws of the State of New Jersey and Employers Liability Insurance with limits not less than:
    - 1. \$1,000,000 BODILY INJURY, EACH OCCURRENCE;
    - 2. \$1,000,000 DISEASE EACH EMPLOYEE; and
    - 3. \$1,000,000 DISEASE AGGREGATE LIMIT.
- A. This \$1,000,000 amount may have been raised by the RFP when deemed necessary by the Director; and
  - B. In the case of a contract entered into pursuant to N.J.S.A. 52:32-17 et seq., (small business set asides) the minimum amount of insurance coverage in subsections a., b., and c. above may have been lowered in the RFP for certain commodities when deemed in the best interests of the State by the Director.

## **5. TERMS GOVERNING ALL CONTRACTS**

### **5.1 CONTRACTOR IS INDEPENDENT CONTRACTOR**

The contractor's status shall be that of any independent contractor and not as an employee of the State.

### **5.2 CONTRACT AMOUNT**

The estimated amount of the contract(s), when stated on the RFP form, shall not be construed as either the maximum or minimum amount which the State shall be obliged to order as the result of the RFP or any contract entered into as a result of the RFP.

### **5.3 CONTRACT TERM AND EXTENSION OPTION**

If, in the opinion of the Director, it is in the best interest of the State to extend a contract, the contractor shall be so notified of the Director's Intent at least 30 days prior to the expiration date of the existing contract. The contractor shall have 15 calendar days to respond to the Director's request to extend the term and period of performance of the contract. If the contractor agrees to the extension, all terms and conditions including pricing of the original contract shall apply unless more favorable terms for the State have been negotiated.

### **5.4 STATE'S OPTION TO REDUCE SCOPE OF WORK**

The State has the option, in its sole discretion, to reduce the scope of work for any deliverable, task or subtask called for under this contract. In such an event, the Director shall provide to the contractor advance written notice of the change in scope of work and what the Director believes should be the corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the Director's proposed adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the proposed adjusted contract price. The parties shall negotiate the adjusted contract price. If the parties are unable to agree on an adjusted contract price, the Director shall make a prompt decision

taking all such information into account, and shall notify the contractor of the final adjusted contract price; and

- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

#### **5.5 CHANGE IN LAW**

Whenever a change in applicable law or regulation affects the scope of work, the Director shall provide written notice to the contractor of the change and the Director's determination as to the corresponding adjusted change in the scope of work and corresponding adjusted contract price. Within five (5) business days of receipt of such written notice, if either is applicable:

- A. If the contractor does not agree with the adjusted contract price, the contractor shall submit to the Director any additional information that the contractor believes impacts the adjusted contract price with a request that the Director reconsider the adjusted contract price. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the final adjusted contract price; and
- B. If the contractor has undertaken any work effort toward a deliverable, task or subtask that is being changed or eliminated such that it would not be compensated under the adjusted contract, the contractor shall be compensated for such work effort according to the applicable portions of its price schedule and the contractor shall submit to the Director an itemization of the work effort already completed by deliverable, task or subtask within the scope of work, and any additional information the Director may request. The Director shall make a prompt decision taking all such information into account, and shall notify the contractor of the compensation to be paid for such work effort.

#### **5.6 SUSPENSION OF WORK**

The State may, for valid reason, issue a stop order directing the contractor to suspend work under the contract for a specific time. The contractor shall be paid for goods ordered, goods delivered, or services requested and performed until the effective date of the stop order. The contractor shall resume work upon the date specified in the stop order, or upon such other date as the State Contract Manager may thereafter direct in writing. The period of suspension shall be deemed added to the contractor's approved schedule of performance. The Director shall make an equitable adjustment, if any is required, to the contract price. The contractor shall provide whatever information that Director may require related to the equitable adjustment.

#### **5.7 TERMINATION OF CONTRACT**

- A. For Convenience:  
Notwithstanding any provision or language in this contract to the contrary, the Director may terminate this contract at any time, in whole or in part, for the convenience of the State, upon no less than 30 days written notice to the contractor;
- B. For Cause:
  - 1. Where a contractor fails to perform or comply with a contract or a portion thereof, and/or fails to comply with the complaints procedure in N.J.A.C. 17:12-4.2 et seq., the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond; and

2. Where in the reasonable opinion of the Director, a contractor continues to perform a contract poorly as demonstrated by e.g., formal complaints, late delivery, poor performance of service, short-shipping, so that the Director is required to use the complaints procedure in N.J.A.C. 17:12-4.2 et seq., and there has been a failure on the part of the contractor to make progress towards ameliorating the issue(s) or problem(s) set forth in the complaint, the Director may terminate the contract, in whole or in part, upon ten (10) days' notice to the contractor with an opportunity to respond.
- C. In cases of emergency the Director may shorten the time periods of notification and may dispense with an opportunity to respond; and
- D. In the event of termination under this section, the contractor shall be compensated for work performed in accordance with the contract, up to the date of termination. Such compensation may be subject to adjustments.

#### **5.8 SUBCONTRACTING OR ASSIGNMENT**

- A. Subcontracting: The contractor may not subcontract other than as identified in the contractor's proposal without the prior written consent of the Director. Such consent, if granted in part, shall not relieve the contractor of any of his/her responsibilities under the contract, nor shall it create privity of contract between the State and any subcontractor. If the contractor uses a subcontractor to fulfill any of its obligations, the contractor shall be responsible for the subcontractor's: (a) performance; (b) compliance with all of the terms and conditions of the contract; and (c) compliance with the requirements of all applicable laws; and
- B. Assignment: The contractor may not assign its responsibilities under the contract, in whole or in part, without the prior written consent of the Director.

#### **5.9 NO CONTRACTUAL RELATIONSHIP BETWEEN SUBCONTRACTORS AND STATE**

Nothing contained in any of the contract documents, including the RFP and vendor's bid or proposal shall be construed as creating any contractual relationship between any subcontractor and the State.

#### **5.10 MERGERS, ACQUISITIONS**

If, during the term of this contract, the contractor shall merge with or be acquired by another firm, the contractor shall give notice to the Director as soon as practicable and in no event longer than 30 days after said merger or acquisition. The contractor shall provide such documents as may be requested by the Director, which may include but need not be limited to the following: corporate resolutions prepared by the awarded contractor and new entity ratifying acceptance of the original contract, terms, conditions and prices; updated information including ownership disclosure and Federal Employer Identification Number. The documents must be submitted within 30 days of the request. Failure to do so may result in termination of the contract for cause.

If, at any time during the term of the contract, the contractor's partnership, limited liability company, limited liability partnership, professional corporation, or corporation shall dissolve, the Director must be so notified. All responsible parties of the dissolved business entity must submit to the Director in writing, the names of the parties proposed to perform the contract, and the names of the parties to whom payment should be made. No payment shall be made until all parties to the dissolved business entity submit the required documents to the Director.

#### **5.11 PERFORMANCE GUARANTEE OF CONTRACTOR**

The contractor hereby certifies that:

- a. The equipment offered is standard new equipment, and is the manufacturer's latest model in production, with parts regularly used for the type of equipment offered; that such parts are all in production and not likely to be discontinued; and that no attachment or part has been substituted or applied contrary to manufacturer's recommendations and standard practice;

- b. All equipment supplied to the State and operated by electrical current is UL listed where applicable;
- c. All new machines are to be guaranteed as fully operational for the period stated in the contract from time of written acceptance by the State. The contractor shall render prompt service without charge, regardless of geographic location;
- d. Sufficient quantities of parts necessary for proper service to equipment shall be maintained at distribution points and service headquarters;
- e. Trained mechanics are regularly employed to make necessary repairs to equipment in the territory from which the service request might emanate within a 48-hour period or within the time accepted as industry practice;
- f. During the warranty period the contractor shall replace immediately any material which is rejected for failure to meet the requirements of the contract; and
- g. All services rendered to the State shall be performed in strict and full accordance with the specifications stated in the contract. The contract shall not be considered complete until final approval by the State's using agency is rendered.

#### **5.12 DELIVERY REQUIREMENTS**

- A. Deliveries shall be made at such time and in such quantities as ordered in strict accordance with conditions contained in the contract;
- B. The contractor shall be responsible for the delivery of material in first class condition to the State's using agency or the purchaser under this contract and in accordance with good commercial practice;
- C. Items delivered must be strictly in accordance with the contract; and
- D. In the event delivery of goods or services is not made within the number of days stipulated or under the schedule defined in the contract, the using agency shall be authorized to obtain the material or service from any available source, the difference in price, if any, to be paid by the contractor.

#### **5.13 APPLICABLE LAW AND JURISDICTION**

This contract and any and all litigation arising therefrom or related thereto shall be governed by the applicable laws, regulations and rules of evidence of the State of New Jersey without reference to conflict of laws principles and shall be filed in the appropriate Division of the New Jersey Superior Court.

#### **5.14 CONTRACT AMENDMENT**

Except as provided herein, the contract may only be amended by written agreement of the State and the contractor.

#### **5.15 MAINTENANCE OF RECORDS**

The contractor shall maintain records for products and/or services delivered against the contract for a period of five (5) years from the date of final payment unless a longer period is required by law. Such records shall be made available to the State, including the Comptroller, for audit and review.

#### **5.16 ASSIGNMENT OF ANTITRUST CLAIM(S)**

The contractor recognizes that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the ultimate purchaser. Therefore, and as consideration for executing this contract, the contractor, acting herein by and through its duly authorized agent,

hereby conveys, sells, assigns, and transfers to the State of New Jersey, for itself and on behalf of its political subdivisions and public agencies, all right, title and interest to all claims and causes of action it may now or hereafter acquire under the antitrust laws of the United States or the State of New Jersey, relating to the particular goods and services purchased or acquired by the State of New Jersey or any of its political subdivisions or public agencies pursuant to this contract. In connection with this assignment, the following are the express obligations of the contractor:

- A. It shall take no action that will in any way diminish the value of the rights conveyed or assigned hereunder;
- B. It shall advise the Attorney General of New Jersey:
  - 1. In advance of its intention to commence any action on its own behalf regarding any such claim or cause(s) of action; and
  - 2. Immediately upon becoming aware of the fact that an action has been commenced on its behalf by some other person(s) of the pendency of such action.
- C. It shall notify the defendants in any antitrust suit of the within assignment at the earliest practicable opportunity after the contractor has initiated an action on its own behalf or becomes aware that such an action has been filed on its behalf by another person. A copy of such notice shall be sent to the Attorney General of New Jersey; and
- D. It is understood and agreed that in the event any payment under any such claim or cause of action is made to the contractor, it shall promptly pay over to the State of New Jersey the allotted share thereof, if any, assigned to the State hereunder.

## **6. TERMS RELATING TO PRICE AND PAYMENT**

### **6.1 PRICE FLUCTUATION DURING CONTRACT**

Unless otherwise agreed to in writing by the State, all prices quoted shall be firm through issuance of contract or purchase order and shall not be subject to increase during the period of the contract. In the event of a manufacturer's or contractor's price decrease during the contract period, the State shall receive the full benefit of such price reduction on any undelivered purchase order and on any subsequent order placed during the contract period. The Director must be notified, in writing, of any price reduction within five (5) days of the effective date.

Failure to report price reductions may result in cancellation of contract for cause, pursuant to provision 5.7(b)1.

### **6.2 TAX CHARGES**

The State of New Jersey is exempt from State sales or use taxes and Federal excise taxes. Therefore, price quotations must not include such taxes. The State's Federal Excise Tax Exemption number is 22-75-0050K.

### **6.3 PAYMENT TO VENDORS**

- a. The using agency(ies) is (are) authorized to order and the contractor is authorized to ship only those items covered by the contract resulting from the RFP. If a review of orders placed by the using agency(ies) reveals that goods and/or services other than that covered by the contract have been ordered and delivered, such delivery shall be a violation of the terms of the contract and may be considered by the Director as a basis to terminate the contract and/or not award the contractor a subsequent contract. The Director may take such steps as are necessary to have the items returned by the agency, regardless of the time between the date of delivery and discovery of the violation. In such event, the contractor shall reimburse the State the full purchase price;
- b. The contractor must submit invoices to the using agency with supporting documentation evidencing that work or goods for which payment is sought has been satisfactorily



completed or delivered. For commodity contracts, the invoice, together with the original Bill of Lading, express receipt and other related papers must be sent to the State Contract Manager or using agency on the date of each delivery. For contracts featuring services, invoices must reference the tasks or subtasks detailed in the Scope of Work section of the RFP and must be in strict accordance with the firm, fixed prices submitted for each task or subtask on the RFP pricing sheets. When applicable, invoices should reference the appropriate RFP price sheet line number from the contractor's bid proposal. All invoices must be approved by the State Contract Manager or using agency before payment will be authorized;

- c. In all time and materials contracts, the State Contract Manager or designee shall monitor and approve the hours of work and the work accomplished by contractor and shall document both the work and the approval. Payment shall not be made without such documentation. A form of timekeeping record that should be adapted as appropriate for the Scope of Work being performed can be found at [www.nj.gov/treasury/purchase/forms/Vendor\\_Timesheet.xls](http://www.nj.gov/treasury/purchase/forms/Vendor_Timesheet.xls); and
- d. The contractor shall provide, on a monthly and cumulative basis, a breakdown in accordance with the budget submitted, of all monies paid to any small business, minority or woman-owned subcontractor(s). This breakdown shall be sent to the Chief of Operations, Division of Revenue, P.O. Box 628, Trenton, NJ 08646.

#### **6.4 OPTIONAL PAYMENT METHOD: P-CARD**

The State offers contractors the opportunity to be paid through the MasterCard procurement card (p-card). A contractor's acceptance and a State agency's use of the p-card are optional. P-card transactions do not require the submission of a contractor invoice; purchasing transactions using the p-card will usually result in payment to a contractor in three (3) days. A contractor should take note that there will be a transaction-processing fee for each p-card transaction. To participate, a contractor must be capable of accepting the MasterCard. Additional information can be obtained from banks or merchant service companies.

#### **6.5 NEW JERSEY PROMPT PAYMENT ACT**

The New Jersey Prompt Payment Act, N.J.S.A. 52:32-32 et seq., requires state agencies to pay for goods and services within 60 days of the agency's receipt of a properly executed State Payment Voucher or within 60 days of receipt and acceptance of goods and services, whichever is later. Properly executed performance security, when required, must be received by the State prior to processing any payments for goods and services accepted by state agencies. Interest will be paid on delinquent accounts at a rate established by the State Treasurer. Interest shall not be paid until it exceeds \$5.00 per properly executed invoice.

Cash discounts and other payment terms included as part of the original agreement are not affected by the Prompt Payment Act.

#### **6.6 AVAILABILITY OF FUNDS**

The State's obligation to make payment under this contract is contingent upon the availability of appropriated funds and receipt of revenues from which payment for contract purposes can be made. No legal liability on the part of the State for payment of any money shall arise unless and until funds are appropriated each fiscal year to the using agency by the State Legislature and made available through receipt of revenue.

#### **7. TERMS RELATING TO ALL CONTRACTS FUNDED, IN WHOLE OR IN PART, BY FEDERAL FUNDS**

The provisions set forth in this Section 7 of the Standard Terms and Conditions apply to all contracts funded, in whole or in part, by Federal funds as required by 2 CFR 200.317.

## **7.1 PROCUREMENT OF RECOVERED MATERIALS**

To the extent that the scope of work or specifications in the contract requires the contractor to provide any of the following items, this Section 7.1 of the Standard Terms and Conditions modifies the terms of the scope of work or specification.

Pursuant to 2 CFR 200.322, the contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, 42 U.S.C. § 6962. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

- A. Designated items are those set forth in 40 CFR 247 subpart B, as may be amended from time to time, including:
  - 1. Paper and paper products listed in 40 C.F.R. 247.10;
  - 2. Certain vehicular products as listed in 40 CFR 247.11;
  - 3. Certain construction products listed in 40 C.F.R. 247.12;
  - 4. Certain transportation products listed in 40 C.F.R. 247.13;
  - 5. Certain park and recreation products, 40 C.F.R. 247.14;
  - 6. Certain landscaping products listed in 40 C.F.R. 247.15;
  - 7. Certain non-paper office products listed in 40 C.F.R. 247.16; and
  - 8. Other miscellaneous products listed in 40 C.F.R. 247.17.
- B. As defined in 40 CFR 247.3, "recovered material" means:
  - 1. waste materials and byproducts which have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process; and
  - 2. for purposes of purchasing paper and paper products, means waste material and byproducts that have been recovered or diverted from solid waste, but such term does not include those materials and byproducts generated from, and commonly reused within, an original manufacturing process. In the case of paper and paper products, the term recovered materials includes:
    - a. Postconsumer materials such as --
      - i. Paper, paperboard, and fibrous wastes from retail stores, office buildings, homes, and so forth, after they have passed through their end-usage as a consumer item, including: used corrugated boxes; old newspapers; old magazines; mixed waste paper; tabulating cards; and used cordage; and
      - ii. All paper, paperboard, and fibrous wastes that enter and are collected from municipal solid waste, and
    - b. Manufacturing, forest residues, and other wastes such as --
      - i. Dry paper and paperboard waste generated after completion of the papermaking process (that is, those manufacturing operations up to and including the cutting and trimming of the paper machine reel in smaller rolls of rough sheets) including: envelope cuttings, bindery trimmings, and other paper and paperboard waste, resulting from printing, cutting, forming, and other converting operations; bag, box, and carton manufacturing wastes; and butt rolls, mill wrappers, and rejected unused stock; and
      - ii. Finished paper and paperboard from obsolete inventories of paper and paperboard manufacturers, merchants, wholesalers, dealers, printers, converters, or others;

- iii. Fibrous byproducts of harvesting, manufacturing, extractive, or wood-cutting processes, flax, straw, linters, bagasse, slash, and other forest residues;
- iv. Wastes generated by the conversion of goods made from fibrous material (that is, waste rope from cordage manufacture, textile mill waste, and cuttings); and
- v. Fibers recovered from waste water which otherwise would enter the waste stream.

C. For contracts in an amount greater than \$ 100,000, at the beginning of each contract year, contractor shall provide the State estimates of the total percentage of recovered material utilized in the performance of its contract for each of the categories listed in subsection (A). For all contracts subject to this Section 7.1 of the Standard Terms and Conditions, at the conclusion of each contract year, contractor shall certify to the State the minimum recovered material content actually utilized in the prior contract year.

## **7.2 EQUAL EMPLOYMENT OPPORTUNITY**

Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

During the performance of this contract, the contractor agrees as follows:

- (1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:  
  
Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's

commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his/her books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to

which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

### **7.3 DAVIS-BACON ACT, 40 U.S.C. 3141-3148, AS AMENDED**

When required by Federal program legislation, all prime construction contracts in excess of \$ 2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

### **7.4 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT, 40 U.S.C. 3701-3708**

Where applicable, all contracts awarded by the non-Federal entity in excess of \$ 100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

### **7.5 RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

### **7.6 CLEAN AIR ACT, 42 U.S.C. 7401-7671Q, AND THE FEDERAL WATER POLLUTION CONTROL ACT, 33 U.S.C. 1251-1387, AS AMENDED**

Contracts and subgrants of amounts in excess of \$ 150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

#### **7.7 DEBARMENT AND SUSPENSION (EXECUTIVE ORDERS 12549 AND 12689)**

A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

#### **7.8 BYRD ANTI-LOBBYING AMENDMENT, 31 U.S.C. 1352**

Contractors that apply or bid for an award exceeding \$ 100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

## EXHIBIT A

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.A.C. 17:27 et seq.

### GOODS, GENERAL SERVICE AND PROFESSIONAL SERVICES CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union of the contractor's commitments under this chapter and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

The contractor or subcontractor agrees to make good faith efforts to meet targeted county employment goals established in accordance with N.J.A.C. 17:27-5.2.

The contractor or subcontractor agrees to inform in writing its appropriate recruitment agencies including, but not limited to, employment agencies, placement bureaus, colleges, universities, and labor unions, that it does not discriminate on the basis of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, and that it will discontinue the use of any recruitment agency which engages in direct or indirect discriminatory practices.

The contractor or subcontractor agrees to revise any of its testing procedures, if necessary, to assure that all personnel testing conforms with the principles of job related testing, as established by the statutes and court decisions of the State of New Jersey and as established by applicable Federal law and applicable Federal court decisions.

In conforming with the targeted employment goals, the contractor or subcontractor agrees to review all procedures relating to transfer, upgrading, downgrading and layoff to ensure that all such actions are taken without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex, consistent with the statutes and court decisions of the State of New Jersey, and applicable Federal law and applicable Federal court decisions.

The contractor shall submit to the public agency, after notification of award but prior to execution of a goods and services contract, one of the following three documents:

Letter of Federal Affirmative Action Plan Approval;

Certificate of Employee Information Report; or

Employee Information Report Form AA302 (electronically provided by the Division and distributed to the public agency through the Division's website at [http://www.state.nj.us/treasury/contract\\_compliance](http://www.state.nj.us/treasury/contract_compliance)).

The contractor and its subcontractors shall furnish such reports or other documents to the Division of Purchase and Property, CCAU, EEO Monitoring Program as may be requested by the office from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Division of Purchase and Property, CCAU, EEO Monitoring Program for conducting a compliance investigation pursuant to **N.J.A.C. 17:27-1 et seq.**



## EXHIBIT B

### MANDATORY EQUAL EMPLOYMENT OPPORTUNITY LANGUAGE

N.J.S.A. 10:5-31 et seq. (P.L. 1975, c. 127)

N.J.S.A. 10:5-39 et seq. (P.L. 1983, c. 197)

N.J.A.C. 17:27-1.1 et seq.

### CONSTRUCTION CONTRACTS

During the performance of this contract, the contractor agrees as follows:

The contractor or subcontractor, where applicable, will not discriminate against any employee or applicant for employment because of age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Except with respect to affectional or sexual orientation and gender identity or expression, the contractor will ensure that equal employment opportunity is afforded to such applicants in recruitment and employment, and that employees are treated during employment, without regard to their age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex. Such equal employment opportunity shall include, but not be limited to the following: employment, up grading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Public Agency Compliance Officer setting forth provisions of this nondiscrimination clause.

The contractor or subcontractor, where applicable will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to age, race, creed, color, national origin, ancestry, marital status, affectional or sexual orientation, gender identity or expression, disability, nationality or sex.

N.J.S.A. 10:5-39 et seq. requires contractors, subcontractors, and permitted assignees performing construction, alteration, or repair of any building or public work in excess of \$250,000 to guarantee equal employment opportunity to veterans.

The contractor or subcontractor will send to each labor union, with which it has a collective bargaining agreement, a notice, to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under this act and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

The contractor or subcontractor, where applicable, agrees to comply with any regulations promulgated by the Treasurer, pursuant to N.J.S.A. 10:5-31 et seq., as amended and supplemented from time to time and the Americans with Disabilities Act.

When hiring or scheduling workers in each construction trade, the contractor or subcontractor agrees to make good faith efforts to employ minority and women workers in each construction trade consistent with the targeted employment goal prescribed by N.J.A.C. 17:27-7.2; provided, however, that the Dept. of LWD, Construction EEO Monitoring Program may, in its discretion, exempt a contractor or subcontractor from compliance with the good faith procedures prescribed by the following provisions, A, B and C, as long as the Dept. of LWD, Construction EEO Monitoring Program is satisfied that the contractor or subcontractor is employing workers provided by a union which provides evidence, in accordance with standards prescribed by the Dept. of LWD, Construction EEO Monitoring Program, that its percentage of active "card carrying" members who are minority and women workers is equal to or greater than the targeted employment goal established in accordance with N.J.A.C. 17:27-7.2. The contractor or subcontractor agrees that a good faith effort shall include compliance with the following procedures:

- (A) If the contractor or subcontractor has a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor shall, within three business days of the contract award, seek assurances from the union that it will cooperate with the contractor or subcontractor as it fulfills its affirmative action obligations under this contract and in accordance with the rules promulgated by the Treasurer pursuant to N.J.S.A. 10:5-31 et. seq., as supplemented and amended from time to time and the Americans with Disabilities Act. If the contractor or subcontractor is unable to obtain said assurances from the construction trade union at least five business days prior to the commencement of construction work, the contractor or subcontractor agrees to afford equal employment opportunities minority and women workers directly, consistent with this chapter. If the contractor's or subcontractor's prior experience with a construction trade union, regardless of whether the union has provided said assurances, indicates a significant possibility that the trade union will not refer sufficient minority and women workers consistent with affording equal employment opportunities as specified in this chapter, the contractor or subcontractor agrees to be prepared to provide such opportunities to minority and women workers directly, consistent with this chapter, by complying with the hiring or scheduling procedures prescribed under (B) below; and the contractor or subcontractor further agrees to take said action immediately if it determines that the union is not referring minority and women workers consistent with the equal employment opportunity goals set forth in this chapter.
- (B) If good faith efforts to meet targeted employment goals have not or cannot be met for each construction trade by adhering to the procedures of (A) above, or if the contractor does not have a referral agreement or arrangement with a union for a construction trade, the contractor or subcontractor agrees to take the following actions:
- (1) To notify the public agency compliance officer, the Dept. of LWD, Construction EEO Monitoring Program, and minority and women referral organizations listed by the Division pursuant to N.J.A.C. 17:27-5.3, of its workforce needs, and request referral of minority and women workers;
  - (2) To notify any minority and women workers who have been listed with it as awaiting available vacancies;
  - (3) Prior to commencement of work, to request that the local construction trade union refer minority and women workers to fill job openings, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade;
  - (4) To leave standing requests for additional referral to minority and women workers with the local construction trade union, provided the contractor or subcontractor has a referral agreement or arrangement with a union for the construction trade, the State Training and Employment Service and other approved referral sources in the area;
  - (5) If it is necessary to lay off some of the workers in a given trade on the construction site, layoffs shall be conducted in compliance with the equal employment opportunity and non-discrimination standards set forth in this regulation, as well as with applicable Federal and State court decisions;
  - (6) To adhere to the following procedure when minority and women workers apply or are referred to the contractor or subcontractor:
    - (i) The contractor or subcontractor shall interview the referred minority or women worker.
    - (ii) If said individuals have never previously received any document or certification signifying a level of qualification lower than that required in order to perform the work of the construction trade, the contractor or subcontractor shall in good faith

determine the qualifications of such individuals. The contractor or subcontractor shall hire or schedule those individuals who satisfy appropriate qualification standards in conformity with the equal employment opportunity and non-discrimination principles set forth in this chapter. However, a contractor or subcontractor shall determine that the individual at least possesses the requisite skills, and experience recognized by a union, apprentice program or a referral agency, provided the referral agency is acceptable to the Dept. of LWD, Construction EEO Monitoring Program. If necessary, the contractor or subcontractor shall hire or schedule minority and women workers who qualify as trainees pursuant to these rules. All of the requirements, however, are limited by the provisions of (C) below.

(iii) The name of any interested women or minority individual shall be maintained on a waiting list, and shall be considered for employment as described in (i) above, whenever vacancies occur. At the request of the Dept. of LWD, Construction EEO Monitoring Program, the contractor or subcontractor shall provide evidence of its good faith efforts to employ women and minorities from the list to fill vacancies.

(iv) If, for any reason, said contractor or subcontractor determines that a minority individual or a woman is not qualified or if the individual qualifies as an advanced trainee or apprentice, the contractor or subcontractor shall inform the individual in writing of the reasons for the determination, maintain a copy of the determination in its files, and send a copy to the public agency compliance officer and to the Dept. of LWD, Construction EEO Monitoring Program.

(7) To keep a complete and accurate record of all requests made for the referral of workers in any trade covered by the contract, on forms made available by the Dept. of LWD, Construction EEO Monitoring Program and submitted promptly to the Dept. of LWD, Construction EEO Monitoring Program upon request.

(C) The contractor or subcontractor agrees that nothing contained in (B) above shall preclude the contractor or subcontractor from complying with the union hiring hall or apprenticeship policies in any applicable collective bargaining agreement or union hiring hall arrangement, and, where required by custom or agreement, it shall send journeymen and trainees to the union for referral, or to the apprenticeship program for admission, pursuant to such agreement or arrangement. However, where the practices of a union or apprenticeship program will result in the exclusion of minorities and women or the failure to refer minorities and women consistent with the targeted county employment goal, the contractor or subcontractor shall consider for employment persons referred pursuant to (B) above without regard to such agreement or arrangement; provided further, however, that the contractor or subcontractor shall not be required to employ women and minority advanced trainees and trainees in numbers which result in the employment of advanced trainees and trainees as a percentage of the total workforce for the construction trade, which percentage significantly exceeds the apprentice to journey worker ratio specified in the applicable collective bargaining agreement, or in the absence of a collective bargaining agreement, exceeds the ratio established by practice in the area for said construction trade. Also, the contractor or subcontractor agrees that, in implementing the procedures of (B) above, it shall, where applicable, employ minority and women workers residing within the geographical jurisdiction of the union.

After notification of award, but prior to signing a construction contract, the contractor shall submit to the public agency compliance officer and the Dept. of LWD, Construction EEO Monitoring Program an initial project workforce report (Form AA-201) electronically provided to the public agency by the Dept. of LWD, Construction EEO Monitoring Program, through its website, for distribution to and completion by the contractor, in accordance with N.J.A.C. 17:27-7.

The contractor also agrees to submit a copy of the Monthly Project Workforce Report once a month thereafter for the duration of this contract to the Dept. of LWD, Construction EEO Monitoring Program and to the public agency compliance officer.

The contractor agrees to cooperate with the public agency in the payment of budgeted funds, as is necessary, for on the job and/or off the job programs for outreach and training of minorities and women.

- (D) The contractor and its subcontractors shall furnish such reports or other documents to the Dept. of LWD, Construction EEO Monitoring Program as may be requested by the Dept. of LWD, Construction EEO Monitoring Program from time to time in order to carry out the purposes of these regulations, and public agencies shall furnish such information as may be requested by the Dept. of LWD, Construction EEO Monitoring Program for conducting a compliance investigation pursuant to N.J.A.C. 17:27-1.1 et seq.

## EXECUTIVE ORDER NO. 151 REQUIREMENTS

It is the policy of the Division of Purchase and Property that its contracts should create a workforce that reflects the diversity of the State of New Jersey. Therefore, contractors engaged by the Division of Purchase and Property to perform under a construction contract shall put forth a good faith effort to engage in recruitment and employment practices that further the goal of fostering equal opportunities to minorities and women.

The contractor must demonstrate to the Division of Purchase and Property's satisfaction that a good faith effort was made to ensure that minorities and women have been afforded equal opportunity to gain employment under the Division of Purchase and Property's contract with the contractor. Payment may be withheld from a contractor's contract for failure to comply with these provisions.

Evidence of a "good faith effort" includes, but is not limited to:

1. The Contractor shall recruit prospective employees through the State Job bank website, managed by the Department of Labor and Workforce Development, available online at <http://NJ.gov/http://NJ.gov/JobCentralNJ>;
2. The Contractor shall keep specific records of its efforts, including records of all individuals interviewed and hired, including the specific numbers of minorities and women;
3. The Contractor shall actively solicit and shall provide the Division of Purchase and Property with proof of solicitations for employment, including but not limited to advertisements in general circulation media, professional service publications and electronic media; and
4. The Contractor shall provide evidence of efforts described at 2 above to the Division of Purchase and Property no less frequently than once every 12 months.
5. The Contractor shall comply with the requirements set forth at N.J.A.C. 17:27.

This language is in addition to and does not replace good faith efforts requirements for construction contracts required by N.J.A.C. 17:27-3.6, 3.7 and 3.8, also known as Exhibit B.



**NASPO ValuePoint  
INTENT TO PARTICPATE  
Cooperative Contract(s) for**

**Data Communications Products & Services (2019-2024)**

**I. PURPOSE**

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

**II. SCOPE OF THE CONTRACT(S)**

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

**III. TERM OF THE CONTRACT**

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

**IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION**

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

*State Specific Terms and Conditions:* If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Annual Estimated Volume:* If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

**Annual State Spend** \$26,195,865.00

**Annual Political Subdivision Spend** Unknown

**Total Spend** \$91,642,561.61

**State of** Utah

Christopher Hughes

**Director Name**

801-538-3254

**Director Phone**

christopherhughes@utah.gov

**Director Email**

**Director has approved ITP to be submitted?** Yes ☒ No ☐  
(Click appropriate box)

**State Specific T&Cs to be included in RFP?** Yes ☒ No ☐  
(Click appropriate box)

Solomon Kingston, State Contract Analyst

**State Point of Contact Name and Title**

801-538-3228

**Phone**

skingston@utah.gov

**Email**

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

**Shannon Berry**

Cooperative Development Coordinator

NASPO ValuePoint

[sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org)

**ATTACHMENT A: STATE OF UTAH STANDARD INFORMATION TECHNOLOGY TERMS AND CONDITIONS**  
**STATE OF UTAH COOPERATIVE INFORMATION TECHNOLOGY CONTRACT**

This is a State Cooperative Contract for information technology products and services meaning all computerized and auxiliary automated information handling, including: (a) systems design and analysis; (b) acquisition, storage, and conversion of data; (c) computer programming; (d) information storage and retrieval; (e) voice, radio, video, and data communications; (f) requisite systems controls; (g) simulation; and (h) all related interactions between people and machines.

**1. DEFINITIONS:**

- a. "Access to Secure Public Facilities, Data, and Technology" means Contractor will (A) enter upon secure premises controlled, held, leased, or occupied by the State of Utah or an Eligible User; (B) maintain, develop, or have access to any deployed hardware, software, firmware, or any other technology, that is in use by the State of Utah or an Eligible User; or (C) have access to or receive any Public Data or Confidential Information during the course of performing this Contract.
- b. "Authorized Persons" means the Contractor's employees, officers, partners, Subcontractors or other agents of Contractor who need to access Public Data to enable the Contractor to perform its responsibilities under this Contract.
- c. "Confidential Information" means information that is deemed as confidential under applicable record laws. The State of Utah and the Eligible Users reserves the right to identify, during and after this Contract, additional reasonable types of categories of information that must be kept confidential under federal and state laws by Contractor.
- d. "Contract" means the Contract Signature Page(s), including all referenced attachments and documents incorporated by reference. This Contract may include any purchase orders that result from the parties entering into this Contract.
- e. "Contract Signature Page(s)" means the cover page that Division and Contractor sign.
- f. "Contractor" means the individual or entity delivering the Goods, Custom Deliverables, or performing the Services identified in this Contract. The term "Contractor" shall include Contractor's agents, officers, employees, partners, and/or any other person or entity for which Contractor may be liable under federal, state, or local laws.
- g. "Custom Deliverable" means the Work Product that Contractor is required to deliver to Eligible Users under this Contract.
- h. "Data Breach" means the unauthorized access by a non-authorized person(s) which results in unauthorized acquisition of Public Data and compromises the security, confidentiality, or integrity of Public Data. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.
- i. "Division" means the State of Utah Division of Purchasing.
- j. "DTS" means the Department of Technology Services.
- k. "Eligible User(s)" means the State of Utah's government departments, institutions, agencies, political subdivisions (i.e., colleges, school districts, counties, cities, etc.), and, as applicable, nonprofit organizations, agencies of the federal government, or any other entity authorized by the laws of the State of Utah to participate in State Cooperative Contracts will be allowed to use this Contract.
- l. "Federal Criminal Background Check" means an in depth background check conducted and processed by the FBI that covers all states. Federal Criminal Background Check reports will show if applicant has had any criminal cases filed against them that violated federal criminal law.
- m. "Good" means any deliverable not classified as a Custom Deliverable or Service that Contractor is required to deliver to the Eligible Users under this Contract.
- n. "Non-Public Data" means data, other than personal data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by the State of Utah and the federal government because it contains information that is exempt by state, federal and local statutes, ordinances, or administrative rules from access by the general public as public information.
- o. "Personal Data" means data that includes information relating to a person that identifies the person by a person's first name or first initial and last name and has any of the following personally identifiable information (PII): government-issued identification numbers (e.g., Social Security, driver's license, passport); financial account information; including account number, credit or debit card numbers; or protected health information (PHI) relating to a person.
- p. "Proposal" means Contractor's response documents, including attachments, to the Division's Solicitation.
- q. "Protected Health Information" (PHI) means individually identifiable health information transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI excludes education records covered by the Family Educational Rights and Privacy Act (FERPA), as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv) and employment records held by a covered entity in its role as employer.
- r. "Security Incident" means the potentially unauthorized access by non-authorized persons to Public Data that Contractor believes could reasonably result in the use, disclosure or theft of Public Data within the possession or control of the Contractor. A Security Incident may or may not turn into a Data Breach. It is within an Eligible User's sole discretion to determine whether the unauthorized access is a Security Incident or a Data Breach.



- s. "Services" means the furnishing of labor, time, or effort by Contractor as set forth in this Contract, including but not limited to installation, configuration, implementation, technical support, warranty maintenance, and other support services.
  - t. "Solicitation" means the documents used by the Division to solicit Contractor's Proposal for the Goods, Custom Deliverables, or Services identified in this Contract.
  - u. "Public Data" means all Confidential Information, Non-Public Data, Personal Data, and Protected Health Information that is created or in any way originating with the State of Utah or an Eligible User whether such data or output is stored on the State of Utah's or an Eligible User's hardware, Contractor's hardware, or exists in any system owned, maintained or otherwise controlled by the State of Utah, an Eligible User, or by Contractor. Public Data includes any federal data, that the State of Utah or an Eligible User controls or maintains, that is protected under federal laws, statutes, and regulations.
  - v. "State of Utah" means the State of Utah, in its entirety, including its institutions, agencies, departments, divisions, authorities, instrumentalities, boards, commissions, elected or appointed officers, employees, agents, and authorized volunteers.
  - w. "Subcontractors" means subcontractors or subconsultants, at any tier, that are under the direct or indirect control or responsibility of Contractor, and includes all independent contractors, agents, employees, or anyone else for whom the Contractor may be liable, at any tier, including a person or entity that is, or will be, providing or performing an essential aspect of this Contract, including Contractor's manufacturers, distributors, and suppliers.
  - x. "Work Product" means every invention, modification, discovery, design, development, customization, configuration, improvement, process, software program, work of authorship, documentation, formula, datum, technique, know how, secret, or intellectual property right whatsoever or any interest therein (whether patentable or not patentable or registerable under copyright or similar statutes or subject to analogous protection) that is specifically made, conceived, discovered, or reduced to practice by Contractor or Contractor's Subcontractors (either alone or with others) pursuant to this Contract. Work Product shall be considered a work made for hire under federal, state, and local laws; and all interest and title shall be transferred to and owned by the ordering Eligible User. Notwithstanding anything in the immediately preceding sentence to the contrary, Work Product does not include any Eligible User intellectual property, Contractor's intellectual property (that it owned or licensed prior to this Contract) or Third Party intellectual property.
2. **CONTRACT JURISDICTION, CHOICE OF LAW, AND VENUE:** This Contract shall be governed by the laws, rules, and regulations of the State of Utah. Any action or proceeding arising from this Contract shall be brought in a court of competent jurisdiction in the State of Utah. Venue shall be in Salt Lake City, in the Third Judicial District Court for Salt Lake County.
  3. **LAWS AND REGULATIONS:** At all times during this Contract, Contractor and all the Goods delivered under this Contract will comply with all applicable federal and state constitutions, laws, rules, codes, orders, and regulations, including applicable licensure and certification requirements.
  4. **NO WAIVER OF SOVEREIGN IMMUNITY:** In no event shall this Contract be considered a waiver by the Division, an Eligible User, or the State of Utah of any form of defense or immunity, whether sovereign immunity, governmental immunity, or any other immunity based on the Eleventh Amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.
  5. **RECORDS ADMINISTRATION:** Contractor shall maintain or supervise the maintenance of all records necessary to properly account for Contractor's performance and the payments made by Eligible Users to Contractor under this Contract. These records shall be retained by Contractor for at least six (6) years after final payment, or until all audits initiated within the six (6) years have been completed, whichever is later. Contractor agrees to allow, at no additional cost, State of Utah auditors, federal auditors, Eligible Users or any firm identified by the Division, access to all such records. Contractor must refund to the Division any overcharges brought to Contractor's attention by the Division or the Division's auditor and Contractor is not permitted to offset identified overcharges by alleged undercharges to Eligible Users.
  6. **CERTIFY REGISTRATION AND USE OF EMPLOYMENT "STATUS VERIFICATION SYSTEM":** This Status Verification System, also referred to as "E-verify", requirement only applies to contracts issued through a Request for Proposal process and to sole sources that are included within a Request for Proposal.
    - (1) Contractor certifies as to its own entity, under penalty of perjury, that Contractor has registered and is participating in the Status Verification System to verify the work eligibility status of Contractor's new employees that are employed in the State of Utah in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended.
    - (2) Contractor shall require that the following provision be placed in each subcontract at every tier: "The subcontractor shall certify to the main (prime or general) contractor by affidavit that the subcontractor has verified through the Status Verification System the employment status of each new employee of the respective subcontractor, all in accordance with applicable immigration laws including Section 63G-12-302, Utah Code, as amended, and to comply with all applicable employee status verification laws. Such affidavit must be provided prior to the notice to proceed for the subcontractor to perform the work."
    - (3) Contractor's failure to comply with this section will be considered a material breach of this Contract.
    - (4) Contractor shall protect, indemnify, and hold harmless the Division, the Eligible Users, and the State of Utah, and anyone that the State of Utah may be liable for, against any claim, damages, or liability arising out of or resulting from violations of the above Status Verification System Section whether violated by employees, agents, or contractors of the following: (a) Contractor; (b) Subcontractor at any tier; and/or (c) any entity or person for whom the Contractor or Subcontractor may be liable.
  7. **CONFLICT OF INTEREST:** Contractor represents that none of its officers or employees are officers or employees of the State of

Utah, unless disclosure has been made to the Division.

8. **CONFLICT OF INTEREST WITH STATE EMPLOYEES:** Contractor agrees to comply and cooperate in good faith with all conflict of interest and ethic laws including Section 63G-6a-2404, Utah Procurement Code, as amended.
9. **INDEPENDENT CONTRACTOR:** Contractor's legal status is that of an independent contractor, and in no manner shall Contractor be deemed an employee or agent of the Division, the Eligible Users, or the State of Utah, and therefore is not entitled to any of the benefits associated with such employment. Contractor, as an independent contractor, shall have no authorization, express or implied, to bind the Division, the Eligible Users, or the State of Utah to any agreements, settlements, liabilities, or understandings whatsoever, and agrees not to perform any acts as an agent for the Division, the Eligible Users, or the State of Utah. Contractor shall remain responsible for all applicable federal, state, and local taxes, and all FICA contributions.
10. **CONTRACTOR ACCESS TO SECURE PUBLIC FACILITIES, PUBLIC DATA, AND TECHNOLOGY:** An employee of Contractor or a Subcontractor may be required to complete a Federal Criminal Background Check, if said employee of Contractor or a Subcontractor will have Access to Secure Public Facilities, Public Data, and Technology. Contractor shall provide the Eligible User with sufficient personal information (at Contractor's own expense) so that a Federal Criminal Background Check may be completed by the Eligible User, at the Eligible User's expense. The Eligible User will also provide Contractor with a Disclosure Form and Confidentiality Agreement which must be filled out by Contractor and returned to the Eligible User. Additionally, each employee of Contractor or a Subcontractor, who will have Access to Secure Public Facilities, Public Data, and Technology, will be scheduled by the Eligible User to be fingerprinted, at a minimum of one week prior to having such access. At the time of fingerprinting, said employee of Contractor or a Subcontractor will disclose, in full, any past record of felony or misdemeanor convictions. The Eligible User is authorized to conduct a Federal Criminal Background Check based upon the fingerprints and personal information provided. The Eligible User may use this same information to complete a Name Check in the Utah Criminal Justice Information System (UCJIS) every two years and reserves the right to revoke Access to Secure State Facilities, Data, and Technology granted in the event of any negative results. Contractor agrees to notify the Eligible User if an arrest or conviction of any employee of Contractor or a Subcontractor that has Access to Secure Public Facilities, Public Data and Technology occurs during this Contract. Contractor, in executing any duty or exercising any right under this Contract, shall not cause or permit any of its employees or employees of a Subcontractor (if any) who have been convicted of a felony or misdemeanor to have Access to Secure Public Facilities, Public Data, and Technology. A felony and misdemeanor are defined by the laws of the State of Utah, regardless of where the conviction occurred.
11. **DRUG-FREE WORKPLACE:** Contractor agrees to abide by the Eligible User's drug-free workplace policies while on the Eligible User's or the State of Utah's premises.
12. **CODE OF CONDUCT:** If Contractor is working at facilities controlled or owned by the State of Utah, Contractor agrees to follow and enforce the applicable code of conduct which will be provided upon request by Contractor to the Eligible User. Contractor will assure that each employee or each employee of Subcontractor(s) under Contractor's supervision receives a copy of such code of conduct.
13. **INDEMNITY CLAUSE:** Contractor shall be fully liable for the actions of its agents, employees, officers, partners, and Subcontractors, and shall fully indemnify, defend, and save harmless the Division, the Eligible Users, and the State of Utah from all claims, losses, suits, actions, damages, and costs of every name and description arising out of Contractor's performance of this Contract caused by any intentional act or negligence of Contractor, its agents, employees, officers, partners, or Subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss, or damage arising hereunder due to the sole fault of the Division, the Eligible User, or the State of Utah. The parties agree that if there are any limitations of the Contractor's liability, including a limitation of liability clause for anyone for whom the Contractor is responsible, such limitations of liability will not apply to injuries to persons, including death, or to damages to property.
14. **EMPLOYMENT PRACTICES:** Contractor agrees to abide by the following employment laws: (i) Title VI and VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e) which prohibits discrimination against any employee or applicant for employment or any applicant or recipient of services, on the basis of race, religion, color, or national origin; (ii) Executive Order No. 11246, as amended, which prohibits discrimination on the basis of sex; (iii) 45 CFR 90 which prohibits discrimination on the basis of age; (iv) Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities; and (v) Utah's Executive Order, dated December 13, 2006, which prohibits unlawful harassment in the work place. Contractor further agrees to abide by any other laws, regulations, or orders that prohibit the discrimination of any kind of any of Contractor's employees.
15. **SEVERABILITY:** A declaration or order by any court that any provision of this Contract is illegal and void shall not affect the legality and enforceability of any other provision of this Contract, unless the provisions are mutually dependent.
16. **AMENDMENTS:** This Contract may only be amended by the mutual written agreement of the parties, which amendment will be attached to this Contract. Automatic renewals will not apply to this Contract.
17. **DEBARMENT:** Contractor certifies that it is not presently nor has ever been debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this Contract, by any governmental department or agency, whether international, national, state, or local. Contractor must notify the Division within thirty (30) days if debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any contract by any governmental entity during this Contract.
18. **TERMINATION:** This Contract may be terminated, with cause by either party, in advance of the specified expiration date, upon written notice given by the other party. The party in violation will be given ten (10) days after written notification to correct and cease the violations, after which this Contract may be terminated for cause immediately and subject to the remedies below. This Contract may also be terminated without cause (for convenience), in advance of the specified expiration date, by the Division, upon

thirty (30) days written termination notice being given to the Contractor. The Division and the Contractor may terminate this Contract, in whole or in part, at any time, by mutual agreement in writing.

If Services apply to this Contract, then Contractor shall be compensated for the Services properly performed under this Contract up to the effective date of the notice of termination. Contractor agrees that in the event of such termination for cause or without cause, Contractor's sole remedy and monetary recovery from the Division, the Eligible Users, or the State of Utah is limited to full payment for all work properly performed as authorized under this Contract up to the date of termination as well as any reasonable monies owed as a result of Contractor having to terminate other contracts necessarily and appropriately entered into by Contractor pursuant to this Contract.

- 19. SUSPENSION OF WORK:** Should circumstances arise which would cause the Division to suspend Contractor's responsibilities under this Contract, but not terminate this Contract, this will be done by formal written notice pursuant to the terms of this Contract. Contractor's responsibilities may be reinstated upon advance formal written notice from the Division.
- 20. NONAPPROPRIATION OF FUNDS, REDUCTION OF FUNDS, OR CHANGES IN LAW:** Upon thirty (30) days written notice delivered to the Contractor, this Contract may be terminated in whole or in part at the sole discretion of the Division or an Eligible User, if it is reasonably determined that: (i) a change in Federal or State legislation or applicable laws materially affects the ability of either party to perform under the terms of this Contract; or (ii) that a change in available funds affects an Eligible User's ability to pay under this Contract. A change of available funds as used in this paragraph, includes, but is not limited to, a change in Federal or State funding, whether as a result of a legislative act or by order of the President or the Governor.  
  
If a written notice is delivered under this section, the Eligible User will reimburse Contractor for the Goods or Services properly ordered until the effective date of said notice. The Eligible User will not be liable for any performance, commitments, penalties, or liquidated damages that accrue after the effective date of said written notice.
- 21. SALES TAX EXEMPTION:** The Goods, Custom Deliverables, or Services being purchased by the Eligible Users under this Contract are being paid from the Eligible User's funds and used in the exercise of the Eligible User's essential function as an Eligible User. The Eligible User will provide Contractor with a copy of its sales tax exemption number upon request. It is the Contractor's responsibility to request the sales tax exemption number from the Eligible User.
- 22. TITLE AND OWNERSHIP WARRANTY:** Contractor warrants, represents and conveys full ownership, clear title free of all liens and encumbrances to any Good or Custom Deliverable delivered to the Eligible Users under this Contract. Contractor fully indemnifies the Eligible Users for any loss, damages or actions arising from a breach of this warranty without limitation.
- 23. HARDWARE WARRANTY:** Contractor agrees to warrant and assume responsibility for all hardware portions of any Good or Custom Deliverable, that it licenses, contracts, or sells under this Contract, for a period of one (1) year. Contractor acknowledges that all warranties granted to the Division and Eligible Users by the Uniform Commercial Code of the State of Utah apply to this Contract. Product liability disclaimers and/or warranty disclaimers from Contractor are not applicable to this Contract. In general, the Contractor warrants that the hardware: (a) will perform as specified in the Proposal; (b) will live up to all specific claims listed in the Proposal; (c) will be suitable for the ordinary purposes for which the hardware is used; (d) will be suitable for any special purposes that the Division has relied on Contractor's skill or judgment to consider when it advised the Division about the hardware in the Proposal; (e) the hardware has been properly designed and manufactured; and (f) is free of significant defects or unusual problems about which Eligible User has not been warned.
- 24. SOFTWARE WARRANTY:** Contractor warrants that for a period of ninety (90) days from the date of Acceptance that the software portions of the Goods and Custom Deliverables, that Contractor licenses, contracts, or sells to the Eligible Users under this Contract, will: (a) perform in accordance with the specific claims provided in the Proposal; (b) be suitable for the ordinary purposes for which such Goods and Custom Deliverables are used; (c) be suitable for any special purposes that the Eligible User has relied on Contractor's skill or judgment to consider when it advised the Eligible User about the Goods or Custom Deliverables in its Proposal; (d) have been properly designed and manufactured; and (e) be free of significant defects or unusual problems. Contractor agrees to provide the Eligible Users with bug fixes, including informing the Eligible Users of any known software bugs or software defects that may affect the Eligible User's use of the software during the Contract.
- 25. WARRANTY REMEDIES:** Upon breach of the hardware or software warranty, Contractor will repair or replace (at no charge to the Eligible Users) the Goods or Custom Deliverables whose nonconformance is discovered and made known to Contractor. If the repaired and/or replaced products prove to be inadequate, or fail to meet the performance of its essential purpose, Contractor will refund the full amount of any payments that have been made for the failing products. The rights and remedies of the parties under this warranty are in addition to any other rights and remedies of the parties provided by law or equity.
- 26. UPDATES AND UPGRADES:** Contractor grants to the Eligible Users a non-exclusive, non-transferable license to use upgrades and updates provided by Contractor during the term of this Contract. Such upgrades and updates are subject to the terms of this Contract. The Eligible Users shall download, distribute, and install all updates as released by Contractor during this Contract, and Contractor strongly suggests that the Eligible Users also download, distribute, and install all upgrades as released by Contractor during this Contract.
- 27. BUG FIXING AND REMOTE DIAGNOSTICS:** Contractor shall use commercially reasonable efforts to provide work-around solutions or patches to reported software problems. With an Eligible User's prior written authorization, Contractor may perform remote diagnostics to work on reported problems, subject to Contractor's obligation of this Contract. In the event that an Eligible User declines remote diagnostics, Contractor and the Eligible User may agree to on-site technical support, subject to the terms of this Contract.
- 28. TECHNICAL SUPPORT AND MAINTENANCE:** If technical support and maintenance is a part of the Goods or Custom Deliverables that Contractor provides under this Contract, Contractor will use commercially reasonable efforts to respond, in a

reasonable time, when technical support or maintenance requests regarding the Goods or Custom Deliverables are made to Contractor.

**29. SECURE PROTECTION AND HANDLING OF PUBLIC DATA:** If Contractor is given Public Data as part of this Contract, the protection of Public Data shall be an integral part of the business activities of Contractor to ensure that there is no inappropriate or unauthorized use of Public Data. To the extent that Contractor is given Public Data, Contractor shall safeguard the confidentiality, integrity and availability of the Public Data and comply with the following conditions outlined below. Eligible Users reserve the right to verify Contractor's adherence to the following conditions to ensure they are met during the life of the contract:

1. **Network Security:** Contractor agrees at all times to maintain network security that - at a minimum - includes: network firewall provisioning, intrusion detection, and regular third party penetration testing. Contractor also agrees to maintain network security that conforms to one of the following:

(1) Those standards the State of Utah applies to its own network, found outlined in *DTS Policy 5000-0002 Enterprise Information Security Policy* (copy available upon request);

(2) Current standards set forth and maintained by the National Institute of Standards and Technology, includes those at: <http://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.800-53r4.pdf>; or

(3) Any generally recognized comparable standard that Contractor then applies to its own network and approved by DTS in writing.

2. **Public Data Security:** Contractor agrees to protect and maintain the security of Public Data with protection that is at least as good as or better than that maintained by the State of Utah which will be provided by an Eligible User upon Contractor's request. These security measures included but are not limited to maintaining secure environments that are patched and up to date with all appropriate security updates as designated (ex. Microsoft Notification). Eligible User reserves the right to determine if Contractor's level of protection adequately meets the Eligible User's security requirements.

3. **Public Data Transmission:** Contractor agrees that any and all transmission or exchange of system application data with the Eligible Users and State of Utah and/or any other parties expressly designated by the State of Utah, shall take place via secure means (ex. HTTPS or FTPS).

4. **Public Data Storage:** Contractor agrees that all Public Data will be stored and maintained in data centers in the United States. Contractor agrees that no Public Data at any time will be processed on or transferred to any portable or laptop computing device or any portable storage medium, except for devices that are used and kept only at Contractor's United States data centers, unless such medium is part of the Contractor's designated backup and recovery process. Contractor shall permit its employees and Subcontractors to access non-Public Data remotely only as required to provide technical support. Contractor may provide technical user support on a 24/7 basis using a Follow the Sun model, unless otherwise prohibited by this contract.

5. **Public Data Encryption:** Contractor agrees to store all data provided to Contractor, including State, as part of its designated backup and recovery process in encrypted form, using no less than 128 bit key and include all data as part of a designated backup and recovery process.

6. **Password Protection:** Contractor agrees that any portable or laptop computer that has access to the Eligible Users or State of Utah networks, or stores any Public Data is equipped with strong and secure password protection.

7. **Public Data Re-Use:** Contractor agrees that any and all data exchanged shall be used expressly and solely for the purpose enumerated in this Contract. Contractor further agrees that no Public Data of any kind shall be transmitted, exchanged, or otherwise passed to other Contractors or interested parties except on a case-by-case basis as specifically agreed to in writing by the Eligible Users.

8. **Public Data Destruction:** The Contractor agrees that upon expiration or termination of this Contract it shall erase, destroy, and render unreadable all Public Data from all non-state computer systems and backups, and certify in writing that these actions have been completed within thirty (30) days of the expiration or termination of this Contract or within seven (7) days of the request of the Eligible User, whichever shall come first, unless the Eligible User provides Contractor with a written directive. It is understood by the parties that the Eligible User's written directive may request that certain data be preserved in accordance with applicable law.

9. **Services Shall Be Performed Within United States:** Contractor agrees that all of the Services related to Public Data that it provides to the Eligible Users will be performed by Contractor and Subcontractor(s) within the borders and jurisdiction of the United States.

**30. SECURITY INCIDENT OR DATA BREACH NOTIFICATION:** Contractor shall immediately inform an Eligible User of any Security Incident or Data Breach.

1. **Incident Response:** Contractor may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement and seeking external expertise as mutually agreed upon, defined by law or contained in this Contract. Discussing Security Incidents with the Eligible User should be handled on an urgent as-needed basis, as part of Contractor's communication and mitigation processes, defined by law or contained in this Contract.

2. **Security Incident Reporting Requirements:** Contractor shall report a Security Incident to the Eligible User immediately if Contractor reasonably believes there has been a Security Incident.

3. **Breach Reporting Requirements:** If Contractor has actual knowledge of a confirmed Data Breach that affects the security of any Public Data that is subject to applicable data breach notification law, Contractor shall: (a) promptly notify the Eligible User

within 24 hours or sooner, unless shorter time is required by applicable law; (b) take commercially reasonable measures to address the Data Breach in a timely manner; and (c) be responsible for its Data Breach responsibilities, as provided in the next Section.

- 31. DATA BREACH RESPONSIBILITIES:** This Section only applies when a Data Breach occurs. Contractor agrees to comply with all applicable laws that require the notification of individuals in the event of a Data Breach or other events requiring notification in accordance with DTS Policy 5000-0002 Enterprise Information Security Policy (copy available upon request). In the event of a Data Breach or other event requiring notification under applicable law (Utah Code § 13-44-101 thru 301 et al), Contractor shall: (a) cooperate with the Eligible User by sharing information relevant to the Data Breach; (b) promptly implement necessary remedial measures, if necessary; (c) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in relation to the Data Breach; and (d) in accordance with applicable laws indemnify, hold harmless, and defend DTS and the State of Utah against any claims, damages, or other harm related to such Data Breach. If the Data Breach requires public notification, all communication shall be coordinated with the Eligible User. Contractor shall be responsible for all notification and remedial costs and damages.
- 32. STATE INFORMATION TECHNOLOGY POLICIES:** If Contractor is providing an Executive Branch Agency of the State of Utah with Goods or Custom Deliverables it is important that contractors follow the same policies and procedures that DTS follows for their own internally developed goods and deliverables to minimize security risk, ensure applicable State and Federal laws are followed, address issues with accessibility and mobile device access, and prevent outages and data breaches within the State of Utah's environment. Contractor agrees to comply with the following DTS Policies which are available upon request:
- 1. DTS Policy 4000-0001, Enterprise Application and Database Deployment Policy:** The Enterprise Application and Database Deployment Policy requires any Contractor developing software for the State to develop and establish proper controls that will ensure a clear separation of duties between developing and deploying applications and databases to minimize security risk; to meet due diligence requirements pursuant to applicable state and federal regulations; to enforce contractual obligations; and to protect the State's electronic information and information technology assets.
  - 2. DTS policy 4000-0002, Enterprise Password Standards Policy:** Any Contractor developing software for the State must ensure it is built to follow the password requirements outlined in the Enterprise Password Standards Policy.
  - 3. DTS Policy 4000-0003, Software Development Life Cycle Policy:** The Software Development Life Cycle Policy requires any Contractor developing software for the State to work with DTS in implementing a Software Development Lifecycle (SDLC) that addresses key issues of security, accessibility, mobile device access, and standards compliance.
  - 4. DTS Policy 4000-0004, Change Management Policy:** Per the Change Management Policy, any Goods or Custom Deliverables furnished or Services performed by Contractor which have the potential to cause any form of outage or to modify DTS's or the State of Utah's infrastructure must be reviewed by the DTS Change Management Committee. Following this notification, any outages or Data Breaches which are a direct result of Contractor's failure to comply with DTS instructions and policies following notification will result in Contractor's liability for any and all damages resulting from or associated with the outage or Data Breach.
- 33. PUBLIC INFORMATION:** Contractor agrees that this Contract, any related purchase orders, related invoices, related pricing lists, and the Proposal will be public documents, and may be available for distribution in accordance with the State of Utah's Government Records Access and Management Act (GRAMA). Contractor gives the Division, the Eligible Users, and the State of Utah express permission to make copies of this Contract, any related purchase orders, related invoices, related pricing lists, and Proposal in accordance with GRAMA. The permission to make copies as noted will take precedence over any statements of confidentiality, proprietary information, copyright information, or similar notation. The Division, the Eligible Users, or the State of Utah will not inform Contractor of any request for a copy of this Contract, including any related purchase orders, related invoices, related pricing lists, or the Proposal.
- 34. DELIVERY:** Unless otherwise specified in this Contract, all deliveries will be F.O.B. destination with all transportation and handling charges paid by Contractor. Contractor is responsible for including any freight charges due by the Eligible User to Contractor when providing quotes to the Eligible User unless otherwise specified in this Contract. Invoices listing freight charges that were not identified in the quote prior to shipment, unless otherwise specified in this Contract, will be returned to the Contractor to remove such costs. Responsibility and liability for loss or damage will remain with Contractor until final inspection and acceptance when responsibility will pass to the Eligible Users except as to latent defects, fraud, and Contractor's warranty obligations.
- 35. ELECTRONIC DELIVERY:** Contractor may electronically deliver any Good or Custom Deliverable to Eligible Users or provide any Good and Custom Deliverable for download from the Internet, if approved in writing by the Eligible Users. Contractor should take all reasonable and necessary steps to ensure that the confidentiality of those electronic deliveries is preserved in the electronic delivery process, and are reminded that failure to do so may constitute a breach of obligations owed to the Eligible Users under this Contract. Contractor warrants that all electronic deliveries will be free of known, within reasonable industry standards, malware, bugs, Trojan horses, etc. Any electronic delivery that includes Public Data that Contractor processes or stores must be delivered within the specifications of this Contract.
- 36. ACCEPTANCE PERIOD:** A Good, Custom Deliverable, or Service furnished under this Contract shall function in accordance with the specifications identified in this Contract and Solicitation. If the Goods and Custom Deliverables delivered do not conform to the specifications identified in this Contract and Solicitation ("Defects"), the Eligible Users shall within thirty (30) calendar days of the delivery date ("Acceptance Period") to notify Contractor in writing of the Defects. Contractor agrees that upon receiving such notice, it shall use reasonable efforts to correct the Defects within fifteen (15) calendar days ("Cure Period"). The Eligible User's acceptance of a Good, Custom Deliverable, or Services occurs at the end of the Acceptance Period or Cure Period.
- If after the Cure Period, a Good, Custom Deliverable, or Service still has Defects, then the Eligible User may, at its option: (a) declare Contractor to be in breach and terminate this Contract; (b) demand replacement conforming Goods, Custom Deliverables, or Services from Contractor at no additional cost to the Eligible User; or (c) continue the Cure Period for an additional time period

agreed upon by the Eligible User and Contractor in writing. Contractor shall pay all costs related to the preparation and shipping of the products returned pursuant to this section. No products shall be accepted and no charges shall be paid until acceptance is met. The warranty period will begin upon the end of the Acceptance Period.

**37. ORDERING AND INVOICING:** All orders will be shipped promptly in accordance with the delivery schedule. Contractor will promptly submit invoices (within 30 days of shipment or delivery of services) to the appropriate Eligible User. The contract number shall be listed on all invoices, freight tickets, and correspondence relating to an order under this Contract. The prices paid by the Eligible User will be those prices listed in this Contract, unless Contractor offers a discount at the time of the invoice. It is Contractor's obligation to provide correct and accurate invoicing. The Eligible User has the right to adjust or return any invoice reflecting incorrect pricing.

**38. PROMPT PAYMENT DISCOUNT:** Contractor may quote a prompt payment discount based upon early payment. Contractor shall list payment discount terms on invoices. The prompt payment discount will apply to payments made with purchasing cards and checks. The date from which discount time is calculated will be the date a correct invoice is received.

**39. PAYMENT:**

1. Payments will be made within thirty (30) days from a correct invoice is received, whichever is later. After sixty (60) days from the date a correct invoice is received by the appropriate State official, the Contractor may assess interest on overdue, undisputed account charges up to a maximum of the interest rate paid by the IRS on taxpayer refund claims, plus two percent, computed similarly as the requirements of Section 15-6-3, Utah Prompt Payment Act of Utah Code, as amended. The IRS interest rate is adjusted quarterly, and is applied on a per annum basis, on the invoice amount that is overdue.

2. Unless otherwise stated in this Contract, all payments to Contractor will be remitted by mail, by electronic funds transfer, or by the Eligible User's purchasing card (major credit card). The Division will not allow Contractor to charge electronic payment fees of any kind.

3. The acceptance by Contractor of final payment without a written protest filed with the Eligible User within ten (10) working days of receipt of final payment shall release the Eligible User, the Division, and the State of Utah from all claims and all liability to Contractor for fees and costs pursuant to this Contract.

4. Contractor agrees that if during, or subsequent to the Contract an audit determines that payments were incorrectly reported or paid by the Eligible Users to Contractor, then Contractor shall, upon written request, immediately refund to the Eligible Users any such overpayments.

**40. INDEMNIFICATION – INTELLECTUAL PROPERTY:** Contractor warrants that any Good, Custom Deliverable, or Service furnished by Contractor under this Contract, including its use by the Eligible Users in unaltered form, will not, to Contractor's knowledge, infringe any third party copyrights, patents, trade secrets, and/or other proprietary rights that exist on the effective date of this Contract and/or that arise or are enforceable under the law of the United States of America.

Contractor will release, indemnify, and hold the Division, the Eligible Users, and the State of Utah harmless from liability or damages of any kind or nature, including Contractor's use of any copyrighted or un-copyrighted composition, secret process, patented or un-patented invention, article, or appliance furnished or used in Contractor's performance of this Contract. Additionally, if such a claim or liability is based upon an allegation that a Good, Custom Deliverable, or Service furnished by Contractor infringes on any right protected by any patent, copyright, trademark, trade secret, and/or proprietary right of any third party, Contractor agrees to indemnify and hold harmless the Division, the Eligible Users, and the State of Utah for any judgments, settlements, reasonable costs, and reasonable attorneys' fees resulting from such a claim or liability. Contractor shall defend all actions brought upon such matters to be indemnified hereunder and pay all costs and expenses incidental thereto; however, the Eligible Users shall have the right, at its option, to participate in the defense of any such action without relieving Contractor of any obligation hereunder. The parties agree that if there are any limitations of liability, including a limitation of liability clause in this Contract, such limitations of liability will not apply to this Section.

**41. OWNERSHIP IN INTELLECTUAL PROPERTY:** The parties each recognize that each has no right, title, or interest, proprietary or otherwise, in or to the name or any logo, or intellectual property owned or licensed by the other. Each agree that, without prior written consent of the other or as described in this Contract, it shall not use the name, any logo, or intellectual property owned or licensed by the other.

**42. OWNERSHIP IN CUSTOM DELIVERABLES:** In the event that Contractor provides Custom Deliverables to the Eligible Users, pursuant to this Contract, Contractor grants the ownership in Custom Deliverables, which have been developed and delivered by Contractor exclusively for Eligible Users and are specifically within the framework of fulfilling Contractor's contractual obligations under this contract. Custom Deliverables shall be deemed work made for hire, such that all intellectual property rights, title and interest in the Custom Deliverables shall pass to the Eligible Users, to the extent that the Custom Deliverables are not recognized as work made for hire, Contractor hereby assigns to the Eligible Users any and all copyrights in and to the Custom Deliverables, subject to the following:

1. Contractor has received payment for the Custom Deliverables,

2. Each party will retain all rights to patents, utility models, mask works, copyrights, trademarks, trade secrets, and any other form of protection afforded by law to inventions, models, designs, technical information, and applications ("Intellectual Property Rights") that it owned or controlled prior to the effective date of this contract or that it develops or acquires from activities independent of the services performed under this contract ("Background IP"), and

3. Contractor will retain all right, title, and interest in and to all Intellectual Property Rights in or related to the services, or tangible components thereof, including but not limited to (a) all know-how, intellectual property, methodologies, processes, technologies, algorithms, software, or development tools used in performing the Services (collectively, the "Utilities"), and (b) such ideas,

concepts, know-how, processes and reusable reports, designs, charts, plans, specifications, documentation, forms, templates, or output which are supplied or otherwise used by or on behalf of Contractor in the course of performing the Services or creating the Custom Deliverables, other than portions that specifically incorporate proprietary or Confidential Information or Custom Deliverables of Eligible Users (collectively, the "Residual IP"), even if embedded in the Custom Deliverables.

4. Custom Deliverables, not including Contractor's Intellectual Property Rights, Background IP, and Residual IP, may not be marketed or distributed without written approval by the Eligible Users.

Contractor agrees to grant to the Eligible Users a perpetual, irrevocable, royalty-free license to use Contractor's Background IP, Utilities, and Residual IP, as defined above, solely for the Eligible Users and the State of Utah to use the Custom Deliverables. The Eligible Users reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use and to authorize others to use, for the Eligible User's internal purposes, such Custom Deliverables. For the Goods delivered that consist of Contractor's scripts and code and are not considered Custom Deliverables or Work Product, for any reason whatsoever, Contractor grants the Eligible User a non-exclusive, non-transferable, irrevocable, perpetual right to use, copy, and create derivative works from such, without the right to sublicense, for the Eligible User's internal business operation under this Contract. The Eligible User and the Division may not participate in the transfer or sale of, create derivative works from, or in any way exploit Contractor's Intellectual Property Rights, in whole or in part.

**43. OWNERSHIP, PROTECTION AND USE OF RECORDS:** Except for confidential medical records held by direct care providers, the Eligible Users shall own exclusive title to all information gathered, reports developed, and conclusions reached in performance of this Contract. Contractor may not use, except in meeting its obligations under this Contract, information gathered, reports developed, or conclusions reached in performance of this Contract without the express written consent of the Eligible User. Contractor agrees to maintain the confidentiality of records it holds for the Eligible Users as required by applicable federal, state, or local laws. Eligible Users shall own and retain unlimited rights to use, disclose, or duplicate all information and data (copyrighted or otherwise) developed, derived, documented, stored, or furnished by Contractor under this Contract. Contractor, and any Subcontractors under its control, expressly agrees not to use an Eligible User's confidential data without prior written permission from Eligible User.

**44. PROTECTION, AND USE OF CONFIDENTIAL FEDERAL, STATE, OR LOCAL GOVERNMENT INTERNAL BUSINESS PROCESSES AND PROCEDURES:** In the event that the Eligible User provides Contractor with confidential federal or state business processes, policies, procedures, or practices, pursuant to this Contract, Contractor agrees to hold such information in confidence, in accordance with applicable laws and industry standards of confidentiality, and not to copy, reproduce, sell, assign, license, market, transfer, or otherwise dispose of, give, or disclose such information to third parties or use such information for any purpose whatsoever other than the performance of this Contract. The improper use or disclosure by any party of protected internal federal or state business processes, policies, procedures, or practices is prohibited. Confidential federal or state business processes, policies, procedures, or practices shall not be divulged by Contractor or its Subcontractors, except for the performance of this Contract, unless prior written consent has been obtained in advance from the Eligible User.

**45. PROTECTION, AND RETURN OF DOCUMENTS AND DATA UPON CONTRACT TERMINATION OR COMPLETION:** All documents and data pertaining to work required by this Contract will be the property of the Eligible Users, and must be delivered to the Eligible Users within thirty (30) working days after termination or expiration of this Contract, regardless of the reason for contract termination, and without restriction or limitation to their future use. The costs for returning documents and data to the Eligible Users are included in this Contract.

**46. CONFIDENTIALITY:** Confidential Information may be disclosed to the Contractor under the terms of this Contract. If Confidential Information is disclosed to Contractor then Contractor agrees to adhere to the following:

Contractor will: (a) limit disclosure of any Confidential Information to Authorized Persons who have a need to know such Confidential Information in connection with the current or contemplated business relationship between the parties to which this Contract relates, and only for that purpose; (b) advise its Authorized Persons of the proprietary nature of the Confidential Information and of the obligations set forth in this Contract and require such Authorized Persons to keep the Confidential Information confidential; (c) shall keep all Confidential Information strictly confidential by using a reasonable degree of care, but not less than the degree of care used by it in safeguarding its own confidential information; and (d) not disclose any Confidential Information received by it to any third parties, except as otherwise agreed to in writing by the Eligible Users. Contractor will promptly notify the Eligible Users of any misuse or misappropriation of Confidential Information that comes to Contractor's attention.

Contractor shall be responsible for any breach of this duty of confidentiality contract by any of their officers, agents, subcontractors at any tier, and any of their respective representatives, including any required remedies and/or notifications under applicable law (Utah Code Section 13-44-101 thru 301 et al). Contractor shall indemnify, hold harmless, and defend the Division, the Eligible Users, and State of Utah from claims related to a breach of these confidentiality requirements by Contractor or anyone for whom the Contractor is liable. This duty of confidentiality shall be ongoing and survive the term of this Contract.

**47. ASSIGNMENT/SUBCONTRACT:** Contractor will not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this Contract, in whole or in part, without the prior written approval of the Division.

**48. DEFAULT AND REMEDIES:** Any of the following events will constitute cause for the Division to declare Contractor in default of this Contract: (a) nonperformance of contractual requirements or (b) a material breach of any term or condition of this Contract. The Division will issue a written notice of default providing a fourteen (14) day period in which Contractor will have an opportunity to cure. Time allowed for cure will not diminish or eliminate Contractor's liability for damages. If the default remains, after Contractor has been provided the opportunity to cure, the Division may do one or more of the following: (a) exercise any remedy provided by law; (b) terminate this Contract and any related contracts or portions thereof; (c) impose liquidated damages, if liquidated damages are listed in the contract; (d) suspend Contractor from receiving future solicitations; or (e) request a full refund of the Goods,

Custom Deliverables, or Services furnished by Contractor that are defective or Services that were inadequately performed under this Contract.

- 49. TERMINATION UPON DEFAULT:** In the event this Contract is terminated as a result of a default by Contractor, the Division may procure or otherwise obtain, upon such terms and conditions as the Division deems appropriate, Goods, Custom Deliverables, or Services similar to those terminated, and Contractor shall be liable to the Division for any and all cover costs and damages arising therefrom, including attorneys' fees, excess costs and fees, and cost of cover together with incidental or consequential damages, incurred by the Division in obtaining similar Goods, Custom Deliverables, or Services.
- 50. FORCE MAJEURE:** Neither party to this Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Division and the Eligible Users may immediately terminate this Contract after determining such delay will reasonably prevent successful performance of this Contract.
- 51. PROCUREMENT ETHICS:** Contractor understands that a person who is interested in any way in the sale of any supplies, services, products, construction, or insurance to the State of Utah is violating the law if the person gives or offers to give any compensation, gratuity, contribution, loan, or reward, or any promise thereof to any person acting as a procurement officer on behalf of the State of Utah, or who in any official capacity participates in the procurement of such supplies, services, products, construction, or insurance, whether it is given for their own use or for the use or benefit of any other person or organization.
- 52. CONTRACTOR'S INSURANCE RESPONSIBILITY.** The Contractor shall maintain the following insurance coverage:
- Workers' compensation insurance during the term of this Contract for all its employees and any Subcontractor employees related to this Contract. Workers' compensation insurance shall cover full liability under the workers' compensation laws of the jurisdiction in which the work is performed at the statutory limits required by said jurisdiction.
  - Commercial general liability [CGL] insurance from an insurance company authorized to do business in the State of Utah. The limits of the CGL insurance policy will be no less than one million dollars (\$1,000,000.00) per person per occurrence and three million dollars (\$3,000,000.00) aggregate.
  - Commercial automobile liability [CAL] insurance from an insurance company authorized to do business in the State of Utah. The CAL insurance policy must cover bodily injury and property damage liability and be applicable to all vehicles used in your performance of Services under this Agreement whether owned, non-owned, leased, or hired. The minimum liability limit must be \$1 million per occurrence, combined single limit. The CAL insurance policy is required if Contractor will use a vehicle in the performance of this Contract.
  - Other insurance policies required in the Solicitation.

Certificate of Insurance, showing up-to-date coverage, shall be on file with the State before the Contract may commence.

The State reserves the right to require higher or lower insurance limits where warranted. Failure to provide proof of insurance as required will be deemed a material breach of this Contract. Contractor's failure to maintain this insurance requirement for the term of this Contract will be grounds for immediate termination of this Contract.

**53. RESERVED**

- 54. CONFLICT OF TERMS:** Contractor terms and conditions that apply must be in writing and attached to this Contract. No other terms and conditions will apply to this Contract including terms listed or referenced on a Contractor's website, terms listed in a Contractor quotation/sales order, purchase orders, etc. In the event of any conflict in the contract terms and conditions, the order of precedence shall be: (a) this Attachment A; (b) Contract Signature Page(s); (c) State of Utah's Additional Terms and Conditions, if any; and (d) Contractor Terms and Conditions, if any. Attachment A will be given precedence over any provisions including, limitation of liability, indemnification, standard of care, insurance, or warranty, and will not be nullified by or exception created by more specific terms elsewhere in this Contract.
- 55. ENTIRE AGREEMENT:** This Contract shall constitute the entire agreement between the parties, and supersedes any and all other prior and contemporaneous agreements and understandings between the parties, whether oral or written.
- 56. SURVIVORSHIP:** This paragraph defines the specific contractual provisions that will remain in effect after expiration of, the completion of, or termination of this Contract, for whatever reason: (a) Contract Jurisdiction, Choice of Law, and Venue; (b) Secure Protection and Handling of Public Data; (c) Data Breach Responsibilities; (d) Ownership in Custom Deliverables; (e) Ownership, Protection, and Use of Records, including Residuals of such records; and (f) Ownership, Protection, and Use of Confidential Federal, State, or Local Government Internal Business Processes, including Residuals of such confidential business processes; (g) Ownership, Protection, and Return of Documents and Data Upon Contract Termination or Completion; (h) Confidentiality; (i) Conflict of Terms; and (j) any other terms that by their nature would survive the expiration of, completion, or termination of this contract.
- 57. WAIVER:** The waiver by either party of any provision, term, covenant, or condition of this Contract shall not be deemed to be a waiver of any other provision, term, covenant, or condition of this Contract nor any subsequent breach of the same or any other provision, term, covenant, or condition of this Contract.
- 58. CONTRACT INFORMATION:** During the duration of this Contract, the Division of Purchasing is required to make available contact information of Contractor to the State of Utah Department of Workforce Services. The State of Utah Department of Workforce Services may contact Contractor during the duration of this Contract to inquire about Contractor's job vacancies.
- 59. COMPLIANCE WITH ACCESSIBILITY STANDARDS:** Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973. Contractors must also adhere to Utah Administrative rule R895-14-1-3-



3, which states that vendors developing new websites or applications are required to meet accessibility guidelines subject to rule R895 and correct any items that do not meet these guidelines at no cost to the agency; and Rule R895-14-1-4-2, which states that vendors proposing IT products and services shall provide Voluntary Product Accessibility Template® (VPAT™) documents. Contractor acknowledges that all Goods and Custom Deliverables that it licenses, contracts, or sells to DTS under this contract are accessible to people with disabilities.

- 60. RIGHT TO AUDIT:** Contractor agrees to, upon written request, permit Division, or a third party designated by the Division, to perform an assessment, audit, examination, or review of all of Contractor's sites and environments - including physical, technical, and virtual sites and environments - in order to confirm Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards. Contractor shall fully cooperate with such assessment by providing access to knowledgeable personnel; physical premises; records; technical and physical infrastructures; and any other person, place, or object which may assist the Division or its designee in completing such assessment. In addition, upon request, Contractor shall provide the Division with the results of any audit performed by or on behalf of Contractor that would assist the Division or its designee in confirming Contractor's compliance with this Contract; associated Scopes of Work; and applicable laws, regulations, and industry standards.
- 61. LARGE VOLUME DISCOUNT PRICING:** Eligible Users may seek to obtain additional volume discount pricing for large orders provided Contractor is willing to offer additional discounts for large volume orders. No amendment to this Contract is necessary for Contractor to offer discount pricing to an Eligible User for large volume purchases.
- 62. ELIGIBLE USER PARTICIPATION:** Participation under this Contract by Eligible Users is voluntarily determined by each Eligible User. Contractor agrees to supply each Eligible User with Goods based upon the same terms, conditions and prices of this Contract.
- 63. INDIVIDUAL CUSTOMERS:** Each Eligible User that purchases Goods from this Contract will be treated as if they were individual customers. Each Eligible User will be responsible to follow the terms and conditions of this Contract. Contractor agrees that each Eligible User will be responsible for their own charges, fees, and liabilities. Contractor shall apply the charges to each Eligible User individually. The Division is not responsible for any unpaid invoice.
- 64. QUANTITY ESTIMATES:** The Division does not guarantee any purchase amount under this Contract. Estimated quantities are for Solicitation purposes only and are not to be construed as a guarantee.
- 65. ORDERING:** Orders will be placed by the using Eligible User directly with Contractor. All orders will be shipped promptly in accordance with the terms of this Contract.
- 66. REPORTS AND FEES:**

1. **Administrative Fee:** Contractor agrees to provide a quarterly administrative fee to the State in the form of a Check or EFT payment. The fee will be payable to the "State of Utah Division of Purchasing" and will be sent to State of Utah, Division of Purchasing, 3150 State Office Building, Capitol Hill, PO Box 141061, Salt Lake City, UT 84114. The Administrative Fee will be the amount listed in the Solicitation and will apply to all purchases (net of any returns, credits, or adjustments) made under this Contract.
2. **Quarterly Reports:** Contractor agrees to provide a quarterly utilization report, reflecting net sales to the State during the associated fee period. The report will show the quantities and dollar volume of purchases by each agency and political subdivision. The quarterly report will be provided in secure electronic format and/or submitted electronically to the Utah reports email address: salesreports@utah.gov.
3. **Report Schedule:** Quarterly utilization reports shall be made in accordance with the following schedule:

<u>Period End</u>	<u>Reports Due</u>
March 31	April 30
June 30	July 31
September 30	October 31
December 31	January 31

4. **Fee Payment:** After the Division receives the quarterly utilization report it will send Contractor an invoice for the total quarterly administrative fee owed to the Division. Contractor shall pay the quarterly administrative fee within thirty (30) days from receipt of invoice.
5. **Timely Reports and Fees:** If the quarterly administrative fee is not paid by thirty (30) days of receipt of invoice or quarterly utilization reports are not received by the report due date, then Contractor will be in material breach of this Contract.

**If Services are applicable to this Contract, the following terms and conditions apply to this Contract:**

- 67. TIME IS OF THE ESSENCE:** The Services shall be completed by any applicable deadline stated in this Contract. For all Services, time is of the essence.
- 68. PERFORMANCE EVALUATION:** The Division may conduct a performance evaluation of Contractor's Services, including Contractor's Subcontractors, if any. Results of any evaluation may be made available to the Contractor upon Contractor's request.
- 69. ADDITIONAL INSURANCE REQUIREMENTS:**
1. Professional liability insurance in the amount as described in the Solicitation for this Contract, if applicable.
  2. Any other insurance policies described or referenced in the Solicitation for this Contract.

3. Any type of insurance or any increase of limits of liability not described in this Contract which the Contractor requires for its own protection or on account of any federal, state, or local statute, rule, or regulation shall be its own responsibility, and shall be provided at Contractor's own expense.

4. The carrying of insurance required by this Contract shall not be interpreted as relieving the Contractor of any other responsibility or liability under this Contract or any applicable law, statute, rule, regulation, or order. Contractor must provide proof of the above listed policies within thirty (30) days of being awarded this Contract.

**70. STANDARD OF CARE:** The Services of Contractor and its Subcontractors shall be performed in accordance with the standard of care exercised by licensed members of their respective professions having substantial experience providing similar services which similarities include the type, magnitude, and complexity of the Services that are the subject of this Contract.

**71. STATE REVIEWS, LIMITATIONS:** The Division reserves the right to perform plan checks, plan reviews, other reviews, and/or comment upon the Services of Contractor.

**72. TRAVEL COSTS:** The following will apply unless otherwise agreed to in the contract: All travel costs associated with the delivery of Services under this Contract will be paid according to the rules and per diem rates found in the Utah Administrative Code R25-7. Invoices containing travel costs outside of these rates will be returned to the Contractor for correction.

(Revision Date: April 16, 2018)

## Washington-specific terms and conditions

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### NASPO ValuePoint Solicitation SK18001 – Data Communications Products & Services

The state of Washington intends to participate in the Master Agreement resulting from NASPO ValuePoint Solicitation SK18001 for Data Communications Products & Services. Washington's complete terms and conditions will be detailed in any Participating Addendum to a Master Agreement resulting from Solicitation SK18001.

#### Washington-Specific Terms and Conditions

**1. Washington's Electronic Business Solution (WEBS).**

Contractor represents and warrants that it is registered in Washington's Electronic Business Solution (WEBS), Washington's contract registration system and that, all of its information therein is current and accurate and that throughout the term of this Contract, Contractor shall maintain an accurate profile in WEBS.

**2. Statewide Payee Desk.**

Contractor represents and warrants that it is registered with the Statewide Payee Desk, which registration is a condition to payment.

**3. Contract Sales Reporting.** Contractor shall report total contract sales quarterly to Enterprise Services, as set forth below.

- A. **REPORTING.** Contractor shall report quarterly Contract sales in Enterprise Services' [Contract Sales Reporting System](#). Enterprise Services will provide Contractor with a login password and a vendor number.
- B. **DATA.** Each sales report must identify every authorized Purchasing Entity by name as it is known to Enterprise Services and its total combined sales amount invoiced during the reporting period (i.e., sales of an entire agency or political subdivision, not its individual subsections). The "Miscellaneous" option may be used only with prior approval by Enterprise Services. Upon request, Contractor shall provide contact information for all authorized Purchasing Entities specified herein during the term of this Participating Addendum. Refer sales reporting questions to the Primary Contact set forth below. If there are no contract sales during the reporting period, Contractor must report zero sales.
- C. **DUE DATES FOR CONTRACT SALES REPORTING.** Quarterly Contract Sales Reports must be submitted electronically by the following deadlines for all sales invoiced during the applicable calendar quarter:

**4. Vendor Management Fee.**

Contractor shall pay to Enterprise Services a vendor management fee ("VMF") of 1.50 percent on the purchase price for all sales (the purchase price is the total invoice price less applicable sales tax).

- D. The sum owed by Contractor to Enterprise Services as a result of the VMF is calculated as follows:
- E. Amount owed to Enterprise Services = Total Contract sales invoiced (not including sales tax) x .0150.
- F. The VMF must be rolled into Contractor's current pricing. The VMF must not be shown as a separate line item on any invoice unless specifically requested and approved by Enterprise Services.
- G. Enterprise Services will invoice Contractor quarterly based on Contract sales reported by Contractor. Contractors are not to remit payment until they receive an invoice from Enterprise Services. Contractor's VMF payment to Enterprise Services must reference this Contract number, work request number (if applicable), the year and quarter for which the VMF is being remitted, and the Contractor's name as set forth in this Contract, if not already included on the face of the check.
- H. Failure to accurately report total net sales, to submit a timely usage report, or remit timely payment of the VMF, may be cause for Contract termination or the exercise of other remedies provided by law. Without limiting any other available remedies, the Parties agree that Contractor's failure to remit to Enterprise Services timely payment of the VMF shall obligate Contractor to pay to Enterprise Services, to offset the administrative and transaction costs incurred by the State to identify, process, and collect such sums. The sum of \$200.00 or twenty-five percent (25%) of the outstanding amount, whichever is greater, or the maximum allowed by law, if less.
- I. Enterprise Services reserves the right, upon thirty (30) days advance written notice, to increase, reduce, or eliminate the VMF for subsequent purchases, and reserves the right to renegotiate Contract pricing with Contractor when any subsequent adjustment of the VMF might justify a change in pricing.

## **5. Contractor Representations and Warranties**

Contractor makes each of the following representations and warranties as of the effective date of this Participating Addendum and at the time any order is placed pursuant to the Contract. If, at the time of any such order, Contractor cannot make such representations and warranties, Contractor shall not process any orders and shall, within three (3) business days notify Enterprise Services, in writing, of such breach.

- A. **WAGE VIOLATIONS.** Contractor represents and warrants that, during the term of this Contract and the three (3) year period immediately preceding the award of the Contract, it is not determined, by a final and binding citation and notice of assessment issued by the Washington Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction, to be in willful violation of any provision of Washington state wage laws set forth in RCW chapters 49.46, 49.48, or 49.52.
- B. **PAY EQUALITY.** Contractor represents and warrants that, as required by Washington state law (Laws of 2017, Chap. 1, § 147), during the term of the Contract for the time period of July 1, 2017 through June 30, 2019, it agrees to equality among its workers by ensuring similarly employed individuals are compensated as equals. For purposes of this provision, employees

are similarly employed if the individuals work for the same employer, the performance of the job requires comparable skill, effort, and responsibility, and the jobs are performed under similar working conditions. Job titles alone are not determinative of whether employees are similarly employed. Contractor may allow differentials in compensation for its workers based in good faith on any of the following: a seniority system; a merit system; a system that measures earnings by quantity or quality of production; a bona fide job-related factor or factors; or a bona fide regional difference in compensation levels. A bona fide job-related factor or factors may include, but not be limited to, education, training, or experience, that is: consistent with business necessity; not based on or derived from a gender-based differential; and accounts for the entire differential. A bona fide regional difference in compensation level must be consistent with business necessity; not based on or derived from a gender-based differential; and account for the entire differential. Notwithstanding any provision to the contrary, upon breach of warranty and Contractor's failure to provide satisfactory evidence of compliance within thirty (30) days, Enterprise Services may suspend or terminate this Participating Addendum and Contract and any Purchaser hereunder similarly may suspend or terminate its use of the Contract and/or any agreement entered into pursuant to this Participating Addendum.

- C. **SUSPENSION & DEBARMENT.** Contractor represents and warrants that neither it nor its principals or affiliates presently are debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in any governmental contract by any governmental department or agency within the United States.

- 6. **Compliance with Law; Taxes, Licenses, & Registration:** Contractor shall comply with all applicable law. Contractor shall register to conduct business in the State of Washington and promptly acquire and maintain all necessary licenses and registrations and pay all applicable taxes and fees. In addition, for all sales to purchasers in the State of Washington, Contractor shall calculate, collect, and remit, as appropriate, the applicable state and local sales tax on all invoices.

#### 7. **Subcontractors**

All Contractor's Distributors authorized in the State of Washington, as shown on the dedicated Contractor NASPO ValuePoint website, are approved to provide sales and service support to participants in the NASPO ValuePoint Master Agreement. The Contractor's Distributor's participation will be in accordance with the terms and conditions set forth in the aforementioned Master Agreement.

#### 8. **Public Information**

This Contract and all related documents are subject to public disclosure as required by Washington's Public Records Act, RCW chapter 42.56.

#### 9. **OCIO Policy & Security Compliance**

Contractor shall comply with Washington Office of the Chief Information Officer (OCIO) statewide information technology policies 141.10 – Securing Information Technology Assets Standards and 188 - Accessibility, as applicable, for Purchasing Entity and for Contractor's Product(s) implemented by Purchasing Entity. Such policies are located on the OCIO website at: <https://ocio.wa.gov/policies>.

Prior to final execution of a Washington State Agency's Order with a Contractor, the Contractor's Product(s), as implemented by the Washington State Agency, will be subject to a security design

review performed by Washington Consolidated Technology Services to ensure compliance with OCIO Policy 141.10 - Securing Information Technology Assets Standards.



**NASPO ValuePoint  
INTENT TO PARTICPATE  
Cooperative Contract(s) for**

**Data Communications Products & Services (2019-2024)**

**I. PURPOSE**

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

**II. SCOPE OF THE CONTRACT(S)**

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

Administrative Fee

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

**III. TERM OF THE CONTRACT**

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

**IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION**

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

Award(s)

The solicitation will permit multiple awards.

Additional Requested Information

*State Specific Terms and Conditions:* If the participating state wishes to include any State specific terms and conditions with the release of this RFP, please attach those with this Intent to Participate.

*Annual Estimated Volume:* If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

**Annual State Spend** 16,000,0000.00

**Annual Political Subdivision Spend** 16,000,000.00

**Total Spend** 32,000,000.00

**State of** Minnesota

Ms. Betsy Hayes, Chief Procurement Officer

**Director Name**

651.201.2400

**Director Phone**

Betsy.Hayes@state.mn.us

**Director Email**

**Director has approved ITP to be submitted?** Yes ☒ No ☐  
(Click appropriate box)

**State Specific T&Cs to be included in RFP?** Yes ☐ No ☒  
(Click appropriate box)

Mike Brick, Acquisitions Management Specialist

**State Point of Contact Name and Title**

651.201.2445

**Phone**

mike.brick@state.mn.us

**Email**

Please email completed "Intent to Participate" document by **Tuesday, July 10, 2018** to:

**Shannon Berry**

Cooperative Development Coordinator

NASPO ValuePoint

[sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org)





**NASPO ValuePoint  
INTENT TO PARTICPATE  
Cooperative Contract(s) for**

**Data Communications Products & Services (2019-2024)**

**I. PURPOSE**

The purpose of this Agreement is to provide interested NASPO states with the opportunity to participate in multi-state cooperative contract(s) for the **Data Communications Products & Services**.

It is the intent of the State of Maryland (the “State”) to participate in this joint procurement for Data Communications Products & Services through NASPO in order to obtain the most optimal cost savings and/or reductions in administrative expense for the overall benefit of the State and any of its public bodies, meaning any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or other political subdivision created by law to exercise some sovereign power or to perform some governmental duty (“Public Body”). "Public body" shall include (i) any independent agency of the State.

Additionally, and consistent with the Code of Maryland (the Code), the State’s intent is also to help ensure that all qualified State vendors have access to public business and that no Offeror be arbitrarily or capriciously excluded, and that competition be sought for Maryland businesses to the maximum feasible degree.

To ensure maximum transparency and public access for all State procurement activities and business opportunities, and consistent with Code, the State and any authorized state agency or other Maryland Public Body, hereinafter defined as Authorized Users, shall be required to submit any order directly with a contractor through the State’s central electronic procurement website, eMaryland Marketplace (“eMM”) or any then-current State eProcurement program, and the details for this will be delineated in the ordering instructions at such time that the State may deem it in its best interest to execute a future Participating Addendum (PA).

**II. SCOPE OF THE CONTRACT(S)**

The State of Utah is authorized by agreement of the participants to act as the procurement officer in developing multi-state cooperative contract(s) for **Data Communications Products & Services**.

The resulting contracts will be permissive contracts.

**Administrative Fee**

There will be a 0.25% NASPO ValuePoint administrative fee associated with these contracts. It is anticipated that the individual states will be able to add an administrative fee when the state executes its Participating Addendum.

### III. TERM OF THE CONTRACT

The initial term of the contract will be established for five (5) years from the date of award with options to extend the contract for (2) two additional years.

### IV. SOLICITATION AND CONTRACT DEVELOPMENT/ADDITIONAL INFORMATION

The solicitation and contract development shall be accomplished in compliance with the NASPO ValuePoint Process Guide and the NASPO Memorandum of Agreement for the NASPO cooperative purchasing program, incorporated herein by reference.

#### Solicitation Publication Period

Bidders/Offerors will be given at least 40 days after publication to submit proposals.

#### Solicitation Type and Evaluation Criteria

This RFP will be issued and evaluated in concert with the procurement laws and rules of the State of Utah by a sourcing team comprised of members from several states.

#### Award(s)

The solicitation will permit multiple awards.

#### Additional Requested Information

*State Specific Terms and Conditions:* Maryland specific terms and conditions are attached with this Intent to Participate, for release with this RFP.

*Annual Estimated Volume:* If your State has an existing contract for this commodity or service, please indicate your annual volume of spend (including any potential political subdivision usage if available).

<b>Annual State Spend</b>	\$20MM (estimated)
<b>Annual Political Subdivision Spend</b>	No data available
<b>Total Spend</b>	\$20MM (Estimated)

**State of** Maryland

Robert E. Gleason

**Director Name**

(410) 260-3910

**Director Phone**

sachin.bhatt3@maryland.gov

**Director Email**

**Director has approved ITP to be submitted?**      Yes ☒    No ☐  
(Click appropriate box)

State Specific T&Cs to be included in RFP?

Yes ☒ No ☐

(Click appropriate box)

Sachin Bhatt

**State Point of Contact Name and Title**

410.697.9680

**Phone**

sachin.bhatt3@maryland.gov

**Email**

Please email completed “Intent to Participate” document by **Tuesday, July 10, 2018** to:

**Shannon Berry**

Cooperative Development Coordinator

NASPO ValuePoint

[sberry@naspovaluepoint.org](mailto:sberry@naspovaluepoint.org)

The Code of Maryland Regulations identify the Mandatory Terms and Conditions in 21.07.01.  
Please see the following pages for such terms and conditions.

**Title 21**  
**STATE PROCUREMENT REGULATIONS**

**Subtitle 07 CONTRACT TERMS AND CONDITIONS**

**Chapter 01 Mandatory Contract Provisions — All Contracts (except as provided under COMAR 21.05.07, 21.07.02, and 21.07.03)**

Authority:

Election Law Article, §§14-101—14-108;  
State Finance and Procurement Article, §§12-101, 13-211, 13-217—13-219, 13-221—13-223, 13-317, 16-202, 17-401, 17-402, and 19-114; and  
State Government Article, §§15-502 and 15-503; Annotated Code of Maryland

**.01 Parties to the Contract.**

Mandatory provision for all contracts.

**.02 Scope of Contract.**

Mandatory provision for all contracts. This provision shall reflect the unilateral right of the State to order in writing changes in the work within the scope of the contract.

**.03 Compensation and Method of Payment.**

Mandatory provision for all contracts. The contractor's taxpayer identification number consisting of the Social Security number for individuals and sole proprietors and the federal employer identification number for all other types of organizations shall be indicated in this clause.

**.04 Contract Modifications.**

Mandatory provision for all contracts.

**.05 Non-Hiring of Officials and Employees.**

Mandatory provision for all contracts: "No official or employee of the State of Maryland, as defined under State Government Article, §15-102, Annotated Code of Maryland, whose duties as such official or employee include matters relating to or affecting the subject matter of this contract, shall during the pendency and term of this contract and while serving as an official or employee of the State become or be an employee of the contractor or any entity that is a subcontractor on this contract."

**.06 Disputes.**

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Disputes Clause (short form). "This contract shall be subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland, and COMAR 21.10 (Administrative and Civil Remedies). Pending resolution of a claim, the Contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

B. Alternate Disputes Clause (long form).

"(1) This contract is subject to the provisions of State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland and COMAR 21.10 (Administrative and Civil Remedies).

(2) Except as otherwise may be provided by law, all disputes arising under or as a result of a breach of this contract that are not disposed of by mutual agreement shall be resolved in accordance with this clause.

(3) As used herein, "claim" means a written demand or assertion by one of the parties seeking, as a legal right, the payment of money, adjustment or interpretation of contract terms, or other relief, arising under or relating to this contract. A voucher, invoice, or request for payment that is not in dispute when submitted is not a claim under this clause. However, if the submission subsequently is not acted upon in a reasonable time, or is disputed as to liability or amount, it may be converted to a claim for the purpose of this clause.

(4) A claim shall be made in writing and submitted to the procurement officer for decision in consultation with the Office of the Attorney General.

(5) When a claim cannot be resolved by mutual agreement, the contractor shall submit a written request for final decision to the procurement officer. The written request shall set forth all the facts surrounding the controversy.

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(6) The contractor, at the discretion of the procurement officer, may be afforded an opportunity to be heard and to offer evidence in support of his claim.

(7) The procurement officer shall render a written decision on all claims within 180 days of receipt of the contractor's written claim, unless the procurement officer determines that a longer period is necessary to resolve the claim. If a decision is not issued within 180 days, the procurement officer shall notify the contractor of the time within which a decision shall be rendered and the reasons for such time extension. The decision shall be furnished to the contractor, by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The procurement officer's decision shall be deemed the final action of the State.

(8) The procurement officer's decision shall be final and conclusive unless the contractor mails or otherwise files a written appeal with the Maryland State Board of Contract Appeals within 30 days of receipt of the decision.

(9) Pending resolution of a claim, the contractor shall proceed diligently with the performance of the contract in accordance with the procurement officer's decision."

### **.07 Maryland Law Prevails.**

Mandatory provision for all contracts unless otherwise authorized by the Board of Public Works.

### **.08 Nondiscrimination in Employment.**

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor agrees:(a) not to discriminate in any manner against an employee or applicant for employment because of race, color, religion, creed, age, sex, sexual orientation, gender identification, marital status, national origin, ancestry genetic information or any otherwise unlawful use of characteristics, or disability of a qualified individual with a disability unrelated in nature and extent so as to reasonably preclude the performance of the employment, or the individual's refusal to submit to a genetic test or make available the results of a genetic test; (b) to include a provision similar to that contained in subsection(a), above, in any underlying subcontract except a subcontract for standard commercial supplies or raw materials; and (c) to post and to cause subcontractors to post in conspicuous places available to employees and applicants for employment, notices setting forth the substance of this clause."

### **.09 Contingent Fee Prohibition.**

Mandatory provision for all contracts:

"The contractor, architect, or engineer (as applicable) warrants that it has not employed or retained any person, partnership, corporation, or other entity, other than a bona fide employee or agent working for the contractor, architect, or engineer, to solicit or secure this agreement, and that it has not paid or agreed to pay any person, partnership, corporation, or other entity, other than a bona fide employee or agent, any fee or any other consideration contingent on the making of this agreement."

### **.10 Multi-Year Contracts Contingent Upon Appropriations.**

Mandatory provision for all contracts and contract modifications to be effective in more than one fiscal year:

"If the General Assembly fails to appropriate funds or if funds are not otherwise made available for continued performance for any fiscal period of this Contract succeeding the first fiscal period, this Contract shall be cancelled automatically as of the beginning of the fiscal year for which funds were not appropriated or otherwise made available; provided, however, that this will not affect either the State's rights or the Contractor's rights under any termination clause in this Contract. The effect of termination of the Contract hereunder will be to discharge both the Contractor and the State from future performance of the Contract, but not from their rights and obligations existing at the time of termination. The Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred but not amortized in the price of the Contract. The State shall notify the Contractor as soon as it has knowledge that funds may not be available for the continuation of this Contract for each succeeding fiscal period beyond the first."

### **.11 Termination for Default.**

Mandatory provision for all contracts. One of the following clauses is preferred:

A. Alternate Clause — Termination for Default (short form).

"If the Contractor fails to fulfill its obligation under this contract properly and on time, or otherwise violates any provision of the contract, the State may terminate the contract by written notice to the Contractor. The notice shall specify the acts or

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omissions relied upon as cause for termination. All finished or unfinished work provided by the Contractor shall, at the State's option, become the State's property. The State shall pay the Contractor fair and equitable compensation for satisfactory performance prior to receipt of notice of termination, less the amount of damages caused by Contractor's breach. If the damages are more than the compensation payable to the Contractor, the Contractor will remain liable after termination and the State can affirmatively collect damages. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.11B."

### B. Alternate Clause — Termination for Default (long form).

"(1) The State may, subject to the provisions of paragraph (3) of this regulation, by written notice of default to the Contractor, terminate the whole or any part of this contract in any one of the following circumstances:(a) If the Contractor fails to perform within the time specified herein or any extension thereof; or (b) If the Contractor fails to perform any of the other provisions of this contract, or so fails to make progress as to endanger performance of this contract in accordance with its terms, and in either of these two circumstances does not cure such failure within a period of 10 days (or such longer period as the procurement officer may authorize in writing) after receipt of notice from the procurement officer specifying such failure.

"(2) In the event the State terminates this contract in whole or in part as provided in paragraph(1) of this clause, the State may procure substitute performance upon terms and in whatever manner the procurement officer may deem appropriate, and the Contractor shall be liable to the State for any excess costs for substitute performance; provided, that the Contractor shall continue the performance of this contract to the extent not terminated under the provisions of this clause.

"(3) Except with respect to defaults of subcontractors, the Contractor shall not be liable for any excess costs if the failure to perform the contract arises out of causes beyond the control and without the fault or negligence of the Contractor. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the State in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and unusually severe weather; but in every case the failure to perform shall be beyond the control and without the fault or negligence of the Contractor. If the failure to perform is caused by the default of a subcontractor, and if the default arises out of causes beyond the control of both the Contractor and subcontractor, and without the fault or negligence of either of them, the Contractor shall not be liable for any excess costs for failure to perform unless substitute performance for the subcontractor was obtainable from another source in sufficient time to permit the Contractor to meet the performance schedule.

"(4) If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, or that the default was excusable under the provisions of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause. If, after notice of termination of this contract under the provisions of this clause, it is determined for any reason that the Contractor was not in default under the provisions of this clause, and if this contract does not contain a clause providing for termination for convenience of the State, the contract shall be equitably adjusted to compensate for such termination and the contract modified accordingly; failure to agree to any such adjustment shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes."

"(5) If this contract is terminated as provided in paragraph(1) of this clause, the State, in addition to any other rights provided in this clause, may require the Contractor to transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer,(a) the fabricated or unfabricated parts, work in progress, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (b) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State; and the Contractor shall, upon direction of the procurement officer, protect and preserve property in the possession of the Contractor in which the State has an interest. Payment for completed supplies delivered to and accepted by the State shall be at the contract price. Payment for manufacturing materials delivered to and accepted by the State and for the protection and preservation of property shall be in an amount agreed upon by the Contractor and procurement officer; failure to agree to such amount shall be a dispute concerning a question of fact within the meaning of the clause of this contract entitled "Disputes." The State may withhold from amounts otherwise due the Contractor hereunder such sum as the procurement officer determines to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders.

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"(6) The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this contract.

"(7) As used in paragraph (3) of this clause, the terms, "subcontractor" and "subcontractors" mean subcontractor(s) at any tier."

**.12 Termination for Convenience.**

A. Except as provided in §B of this regulation, mandatory provision for all contracts. One of the following clauses is preferred:

(1) Alternate Clause — Termination for Convenience (short form).

"The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. The State will pay all reasonable costs associated with this contract that the Contractor has incurred up to the date of termination and all reasonable costs associated with termination of the Contract. However, the Contractor shall not be reimbursed for any anticipatory profits that have not been earned up to the date of termination. Termination hereunder, including the determination of the rights and obligations of the parties, shall be governed by the provisions of COMAR 21.07.01.12A(2)."

(2) Alternate Clause — Termination for Convenience (long form).

"(1) The performance of work under this contract may be terminated by the State in accordance with this clause in whole, or from time to time in part, whenever the State shall determine that such termination is in the best interest of the State. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work is terminated and the time when such termination becomes effective.

"(2) After receipt of a Notice of Termination, and except as otherwise directed by the procurement officer, the Contractor shall:

(a) stop work as specified in the Notice of Termination;

(b) place no further orders or subcontracts for materials, services or facilities, except as may be necessary for completion of the portion of the work under the contract as is not terminated;

(c) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination;

(d) assign to the State, in the manner, at times, and to the extent directed by the procurement officer, all of the right, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the State shall have the right, in its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

(e) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the procurement officer, to the extent he may require, which approval or ratification shall be final for all the purposes of this clause;

(f) transfer title and deliver to the State, in the manner, at the times, and to the extent, if any, directed by the procurement officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in connection with the performance of, the work terminated by the Notice of Termination, and (ii) the completed or partially completed plans, drawings, information, and other property which, if the contract had been completed, would have been required to be furnished to the State;

(g) use its best efforts to sell, in the manner, at the times, to the extent, and at the price or prices directed or authorized by the procurement officer, any property of the types referred to in (f) above; provided, however, that the Contractor (i) may not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the procurement officer; and provided further that the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the State to the Contractor under this contract or shall otherwise be credited to the price or cost of the work covered by this contract or paid in such other manner as the procurement officer may direct;

(h) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and



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(i) take any action that may be necessary, or as the procurement officer may direct, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the State has or may acquire an interest.

The Contractor shall submit to the procurement officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the procurement officer, and may request the State to remove them or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the State shall accept title to these items and remove them or enter into a storage agreement covering the same; provided, that the list submitted shall be subject to verification by the procurement officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustment to correct the list as submitted shall be made before final settlement.

"(3) After receipt of a Notice of Termination, the Contractor shall submit to the procurement officer his termination claim, in the form and with certification prescribed by the procurement officer. This claim shall be submitted promptly but in no event later than one(1) year from the effective date of termination, unless one or more extensions in writing are granted by the procurement officer, upon request of the Contractor made in writing within the one-year period or authorized extension thereof. ~~However, if the procurement officer determines that the facts justify such action, he may receive and act upon any such~~ termination claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine the claim at any time after the one-year period or any extension thereof. Upon failure of the Contractor to submit his termination claim within the time allowed, the procurement officer may determine, on the basis of information available to him, the amount, if any, due to the Contractor by reason of the termination and shall thereupon pay to the Contractor the amount so determined.

"(4) Subject to the provisions of paragraph (3), the Contractor and the procurement officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause, which amount or amounts may include a reasonable allowance for profit on work done; provided, that such agreed amount or amounts, exclusive of settlement costs, shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. The contract shall be amended accordingly, and the Contractor shall be paid the agreed amount. Nothing in paragraph (5) of this clause, prescribing the amount to be paid to the Contractor in the event of failure of the Contractor and the procurement officer to agree upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, shall be deemed to limit, restrict, or otherwise determine or affect the amount or amounts that may be agreed upon to be paid to the Contractor pursuant to this paragraph.

"(5) In the event of the failure of the Contractor and the procurement officer to agree as provided in paragraph (4) upon the whole amount to be paid to the Contractor by reason of the termination of work pursuant to this clause, the procurement officer shall pay to the Contractor the amounts determined by the procurement officer as follows, but without duplication of any amounts agreed upon in accordance with paragraph (4):

(a) for completed supplies or services accepted by the State (or sold or acquired as provided in paragraph (2)(g) above) and for which payment has not theretofore been made, a sum equivalent to the aggregate price for the supplies or services computed in accordance with the price or prices specified in the contract, appropriately adjusted for any saving of freight or other charges;

(b) the total of:

(i) the costs incurred in the performance of the work terminated, including initial costs and preparatory expense allocable thereto, but exclusive of any costs attributable to supplies or services paid or to be paid for under paragraph (5)(a) hereof;

(ii) the cost of settling and paying claims arising out of the termination of work under subcontracts or orders, as provided in paragraph (2)(e) above, which are properly chargeable to the terminated portion of the contract (exclusive of amounts paid or payable on account of supplies or materials delivered or services furnished by subcontractors or vendors before the effective date of the Notice of Termination, which amounts shall be included in the costs payable under(i) above); and

(iii) a sum, as profit on(i) above, determined by the procurement officer to be fair and reasonable; provided, however, that if it appears that the contractor would have sustained a loss on the entire contract had it been completed, no profit shall be

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included or allowed under this subdivision (iii) and an appropriate adjustment shall be made reducing the amount of the settlement to reflect the indicated rate of loss; and

(c) the reasonable cost of settlement accounting, legal, clerical, and other expenses reasonably necessary for the preparation of settlement claims and supporting data with respect to the terminated portion of the contract and for the termination and settlement of subcontracts thereunder, together with reasonable storage, transportation, and other costs incurred in connection with the protection or disposition of property allocable to this contract.

The total sum to be paid to the Contractor under (a) and (b) of this paragraph shall not exceed the total contract price as reduced by the amount of payments otherwise made and as further reduced by the contract price of work not terminated. Except for normal spoilage, and except to the extent that the State shall have otherwise expressly assumed the risk of loss, there shall be excluded from the amounts payable to the Contractor as provided in (5)(a) and (b)(i) above, the fair value, as determined by the procurement officer, of property that is destroyed, lost, stolen, or damaged so as to become undeliverable to the State or to a buyer pursuant to paragraph (2)(g).

"(6) Costs claimed, agreed to, or determined pursuant to (3), (4), (5) and (11) hereof shall be in accordance with COMAR 21.09 (Contract Cost Principles and Procedures) as in effect on the date of this contract.

"(7) The Contractor shall have the right of appeal, under the clause of this contract entitled "Disputes," from any determination made by the procurement officer under paragraph (3), (5), or (9) hereof, except that if the Contractor has failed to submit his claim within the time provided in paragraph (3) or (9) hereof, and has failed to request extension of the time, he shall have no right of appeal. In any case where the procurement officer has made a determination of the amount due under paragraph (3), (5), or (9) hereof, the State shall pay to the Contractor the following: (a) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the procurement officer, or (b) if an appeal has been taken, the amount finally determined on such appeal.

"(8) In arriving at the amount due the Contractor under this clause there shall be deducted (a) all unliquidated advance or other payments on account theretofore made to the Contractor, applicable to the terminated portion of this contract, (b) any claim which the State may have against the Contractor in connection with this contract, and (c) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold, pursuant to the provisions of this clause, and not otherwise recovered by or credited to the State.

"(9) If the termination hereunder be partial, the Contractor may file with the procurement officer a claim for an equitable adjustment of the price or prices specified in the contract relating to the continued portion of the contract (the portion not terminated by the Notice of Termination), and such equitable adjustment as may be agreed upon shall be made in such price or prices. Any claim by the Contractor for an equitable adjustment under this clause shall be asserted within ninety (90) days from the effective date of the termination notice, unless an extension is granted in writing by the procurement officer.

"(10) The State may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of this contract whenever in the opinion of the procurement officer the aggregate of such payments shall be within the amount to which the Contractor shall be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the State upon demand, together with interest computed at the prime rate established by the State Treasurer for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the State; provided, however, that no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until ten days after the date of such retention or disposition, or a later date as determined by the procurement officer by reason of the circumstances.

"(11) Unless otherwise provided for in this contract, or by applicable statute, the Contractor shall—from the effective date of termination until the expiration of three years after final settlement under this contract—preserve and make available to the State at all reasonable times at the office of the Contractor but without direct charge to the State, all his books, records, documents and other evidence bearing on the costs and expenses of the Contractor under this contract and relating to the work terminated hereunder, or, to the extent approved by the procurement officer, reproductions thereof."

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### B. Leases of Real Property.

(1) Inclusion of a termination for convenience clause in a real property lease is discretionary with the Board of Public Works, upon recommendation of the Secretary of General Services.

(2) In recommending the exclusion of a termination for convenience clause in a real property lease, the Secretary shall consider such factors as:

(a) The practicality of including the termination for convenience clause in a lease of real property located in another state or overseas when the demand for property of a particular type or in some particular geographic location is extremely intense, or when the contents of a lease are established by a foreign government and are effectively non-negotiable, or both;

(b) The perception of some landlords that the termination for convenience clause permits the State to unilaterally convert a fixed term lease to a day-to-day lease; or

(c) The prospects that some lending institutions may reject loan requests from landlords owning property that the State might wish to lease but that must be first upgraded at the owner's expense to meet State User Agency Requirements.

### .13 Delays and Extensions of Time.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

#### "Delays and Extensions of Time"

"The Contractor agrees to prosecute the work continuously and diligently and no charges or claims for damages shall be made by it for any delays or hindrances from any cause whatsoever during the progress of any portion of the work specified in this Contract.

"Time extensions will be granted only for excusable delays that arise from unforeseeable causes beyond the control and without the fault or negligence of the Contractor, including but not restricted to, acts of God, acts of the public enemy, acts of the State in either its sovereign or contractual capacity, acts of another Contractor in the performance of a contract with the State, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, or delays of subcontractors or suppliers arising from unforeseeable causes beyond the control and without the fault or negligence of either the Contractor or the subcontractors or suppliers."

### .14 Liquidated Damages.

Mandatory provision for all contracts with certified MBE participation goals and any other contracts deemed appropriate by the procurement officer in consultation with the Office of the Attorney General.

### .15 Variations in Estimated Quantities.

Mandatory provision for all contracts that contain estimated quantity items.

### .16 Suspension of Work.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"The procurement officer unilaterally may order the Contractor in writing to suspend, delay, or interrupt all or any part of the work for such period of time as he may determine to be appropriate for the convenience of the State."

### .17 Pre-existing Regulations.

Mandatory provision for all contracts. It shall be in substantially the same form as follows:

"In accordance with the provisions of §11-206 of the State Finance and Procurement Article, Annotated Code of Maryland, the regulations set forth in Title 21 of the Code of Maryland Regulations (COMAR Title 21) in effect on the date of execution of this Contract are applicable to this Contract."

### .18 Payment of State Obligations.

Mandatory provision for all contracts. The following clause is preferred:

"Unless a payment is unauthorized, deferred, delayed, or set-off under COMAR 21.02.07, Payments to the Contractor pursuant to this Contract shall be made no later than 30 days after the State's receipt of a proper invoice from the Contractor."

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The Contractor may be eligible to receive late payment interest at the rate of 9% per annum if:

(1) The Contractor submits an invoice for the late payment interest within thirty days after the date of the State's payment of the amount on which the interest accrued; and

(2) A contract claim has not been filed under State Finance and Procurement Article, Title 15, Subtitle 2, Annotated Code of Maryland.

The State is not liable for interest:

(1) Accruing more than one year after the 31st day after the agency receives the proper invoice; or

(2) On any amount representing unpaid interest. Charges for late payment of invoices are authorized only as prescribed by Title 15, Subtitle 1, of the State Finance and Procurement Article, Annotated Code of Maryland, or by the Public Service Commission of Maryland with respect to regulated public utilities, as applicable."

### **.19 Financial Disclosure.**

Mandatory provision for all contracts:

"The Contractor shall comply with the provisions of §13-221 of the State Finance and Procurement Article of the Annotated Code of Maryland, which requires that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more, shall, within 30 days of the time when the aggregate value of these contracts, leases or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business."

### **.20 Political Contribution Disclosure.**

Mandatory provision for all contracts:

"The Contractor shall comply with Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, or a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more, shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contribution in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on or before: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31. Additional information is available on the State Board of Election website: [http://www.elections.state.md.us/campaign\\_finance/index.html](http://www.elections.state.md.us/campaign_finance/index.html)."

### **.21 Retention of Records.**

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor shall retain and maintain all records and documents relating to this Contract for three years after final payment by the State hereunder or any applicable statute of limitations, whichever is longer, and shall make them available for inspection and audit by authorized representatives of the State, including the procurement officer or designee, at all reasonable times."

### **.22 Compliance with Laws.**

Mandatory provision for all contracts. The following clause is preferred:

"The Contractor hereby represents and warrants that:

"A. It is qualified to do business in the State of Maryland and that it will take such action as, from time to time hereafter, may be necessary to remain so qualified;

"B. It is not in arrears with respect to the payment of any monies due and owing the State of Maryland, or any department or unit thereof, including but not limited to the payment of taxes and employee benefits, and that it shall not become so in arrears during the term of this Contract;

"C. It shall comply with all federal, State, and local laws, regulations, and ordinances applicable to its activities and obligations under this Contract; and

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"D. It shall obtain, at its expense, all licenses, permits, insurance, and governmental approvals, if any, necessary to the performance of its obligations under this Contract."

**.23 Cost and Price Certification.**

Mandatory provision for all contracts and contract modifications (excluding real property leases and architectural services or engineering services contracts (see Regulation .24)) if the contract or modification exceeds \$100,000 or a smaller amount determined by the procurement officer under State Finance and Procurement Article, §13-220. The language shall be in substantially the same form as follows:

**"Cost and Price Certification"**

"A. The Contractor by submitting cost or price information certifies that, to the best of its knowledge, the information submitted is accurate, complete, and current as of a mutually determined specified date prior to the conclusion of any price discussions or negotiations for:

"(1) A negotiated contract, if the total contract price is expected to exceed \$100,000, or a smaller amount set by the procurement officer; or

~~"(2) A change order or contract modification, expected to exceed \$100,000, or a smaller amount set by the procurement officer."~~

"B. The price under this Contract and any change order or modification hereunder, including profit or fee, shall be adjusted to exclude any significant price increases occurring because the Contractor furnished cost or price information which, as of the date agreed upon between the parties, was inaccurate, incomplete, or not current."

**.24 Truth-In-Negotiation Certification.**

Mandatory provision for architectural services or engineering services contracts exceeding \$100,000. It shall be in substantially the same form as follows:

**"Truth-In-Negotiation Certification"**

"The Contractor by submitting cost or price information, including wage rates or other factual unit costs, certifies to the best of its knowledge, information and belief, that:

"A. The wage rates and other factual unit costs supporting the firm's compensation, as set forth in the proposal, are accurate, complete and current as of the contract date;

"B. If any of the items of compensation were increased due to the furnishing of inaccurate, incomplete or noncurrent wage rates or other units of costs, the State is entitled to an adjustment in all appropriate items of compensation, including profit or fee, to exclude any significant sum by which the price was increased because of the defective data. The State's right to adjustment includes the right to a price adjustment for defects in costs or pricing data submitted by a prospective or actual subcontractor; and

"C. If additions are made to the original price of the contract, such additions may be adjusted to exclude any significant sums where it is determined the price has been increased due to inaccurate, incomplete or noncurrent wage rates and other factual costs."

**.25 Contract Affidavit.**

Mandatory contract addendum. The contract addendum shall be in substantially the same form as follows and submitted upon initial award and each renewal thereafter:

**A. AUTHORITY**

I HEREBY AFFIRM THAT:

I, (print name) \_\_\_\_\_ possess the legal authority to make this Affidavit.

**B. CERTIFICATION OF REGISTRATION OR QUALIFICATION WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION**

I FURTHER AFFIRM THAT:

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The business named above is a (check applicable items):

- (1) Corporation — \_\_\_ domestic or \_\_\_ foreign;
- (2) Limited Liability Company — \_\_\_ domestic or \_\_\_ foreign;
- (3) Partnership — \_\_\_ domestic or \_\_\_ foreign;
- (4) Statutory Trust — \_\_\_ domestic or \_\_\_ foreign;
- (5) \_\_\_ Sole Proprietorship

and is registered or qualified as required under Maryland Law.

I further affirm that the above business is in good standing both in Maryland and (IF APPLICABLE) in the jurisdiction where it is presently organized, and has filed all of its annual reports, together with filing fees, with the Maryland State Department of Assessments and Taxation. The name and address of its resident agent (IF APPLICABLE) filed with the State Department of Assessments and Taxation is:

Name and Department ID

Number: \_\_\_\_\_

Address: \_\_\_\_\_

and that if it does business under a trade name, it has filed a certificate with the State Department of Assessments and Taxation that correctly identifies that true name and address of the principal or owner as:

Name and Department ID Number: \_\_\_\_\_

Address: \_\_\_\_\_

C. FINANCIAL DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, the provisions of State Finance and Procurement Article, §13-221, Annotated Code of Maryland, which require that every business that enters into contracts, leases, or other agreements with the State of Maryland or its agencies during a calendar year under which the business is to receive in the aggregate \$100,000 or more shall, within 30 days of the time when the aggregate value of the contracts, leases, or other agreements reaches \$100,000, file with the Secretary of State of Maryland certain specified information to include disclosure of beneficial ownership of the business.

D. POLITICAL CONTRIBUTION DISCLOSURE AFFIRMATION

I FURTHER AFFIRM THAT:

I am aware of, and the above business will comply with, Election Law Article, Title 14, Annotated Code of Maryland, which requires that every person that enters into a procurement contract with the State, a county, a municipal corporation, or other political subdivision of the State, during a calendar year in which the person receives a contract with a governmental entity in the amount of \$200,000 or more shall file with the State Board of Elections statements disclosing: (a) any contributions made during the reporting period to a candidate for elective office in any primary or general election; and (b) the name of each candidate to whom one or more contributions in a cumulative amount of \$500 or more were made during the reporting period. The statement shall be filed with the State Board of Elections: (a) before execution of a contract by the State, a county, a municipal corporation, or other political subdivision of the State, and shall cover the 24 months prior to when a contract was awarded; and (b) if the contribution is made after the execution of a contract, then twice a year, throughout the contract term, on: (i) May 31, to cover the six (6) month period ending April 30; and (ii) November 30, to cover the six (6) month period ending October 31.

E. DRUG AND ALCOHOL FREE WORKPLACE

(Applicable to all contracts unless the contract is for a law enforcement agency and the agency head or the agency head's designee has determined that application of COMAR 21.11.08 and this certification would be inappropriate in connection with the law enforcement agency's undercover operations.)

I CERTIFY THAT:

- (1) Terms defined in COMAR 21.11.08 shall have the same meanings when used in this certification.



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(2) By submission of its bid or offer, the business, if other than an individual, certifies and agrees that, with respect to its employees to be employed under a contract resulting from this solicitation, the business shall:

- (a) Maintain a workplace free of drug and alcohol abuse during the term of the contract;
- (b) Publish a statement notifying its employees that the unlawful manufacture, distribution, dispensing, possession, or use of drugs, and the abuse of drugs or alcohol is prohibited in the business' workplace and specifying the actions that will be taken against employees for violation of these prohibitions;
- (c) Prohibit its employees from working under the influence of drugs or alcohol;
- (d) Not hire or assign to work on the contract anyone who the business knows, or in the exercise of due diligence should know, currently abuses drugs or alcohol and is not actively engaged in a bona fide drug or alcohol abuse assistance or rehabilitation program;
- (e) Promptly inform the appropriate law enforcement agency of every drug-related crime that occurs in its workplace if the business has observed the violation or otherwise has reliable information that a violation has occurred;
- (f) Establish drug and alcohol abuse awareness programs to inform its employees about:

- (i) The dangers of drug and alcohol abuse in the workplace;
- (ii) The business's policy of maintaining a drug and alcohol free workplace;
- (iii) Any available drug and alcohol counseling, rehabilitation, and employee assistance programs; and
- (iv) The penalties that may be imposed upon employees who abuse drugs and alcohol in the workplace;
- (g) Provide all employees engaged in the performance of the contract with a copy of the statement required by §E(2)(b), of this regulation;
- (h) Notify its employees in the statement required by §E(2)(b), of this regulation, that as a condition of continued employment on the contract, the employee shall:
  - (i) Abide by the terms of the statement; and
  - (ii) Notify the employer of any criminal drug or alcohol abuse conviction for an offense occurring in the workplace not later than 5 days after a conviction;
- (i) Notify the procurement officer within 10 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction;
- (j) Within 30 days after receiving notice under §E(2)(h)(ii), of this regulation, or otherwise receiving actual notice of a conviction, impose either of the following sanctions or remedial measures on any employee who is convicted of a drug or alcohol abuse offense occurring in the workplace:
  - (i) Take appropriate personnel action against an employee, up to and including termination; or
  - (ii) Require an employee to satisfactorily participate in a bona fide drug or alcohol abuse assistance or rehabilitation program;

and

(k) Make a good faith effort to maintain a drug and alcohol free workplace through implementation of §E(2)(a)—(j), of this regulation.

(3) If the business is an individual, the individual shall certify and agree as set forth in §E(4), of this regulation, that the individual shall not engage in the unlawful manufacture, distribution, dispensing, possession, or use of drugs or the abuse of drugs or alcohol in the performance of the contract.

(4) I acknowledge and agree that:

- (a) The award of the contract is conditional upon compliance with COMAR 21.11.08 and this certification;
- (b) The violation of the provisions of COMAR 21.11.08 or this certification shall be cause to suspend payments under, or terminate the contract for default under COMAR 21.07.01.11 or 21.07.03.15, as applicable; and

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(c) The violation of the provisions of COMAR 21.11.08 or this certification in connection with the contract may, in the exercise of the discretion of the Board of Public Works, result in suspension and debarment of the business under COMAR 21.08.03.

F. CERTAIN AFFIRMATIONS VALID

I FURTHER AFFIRM THAT:

To the best of my knowledge, information, and belief, each of the affirmations, certifications, or acknowledgements contained in that certain Bid/Proposal Affidavit dated \_\_\_\_\_, 20\_\_\_\_, and executed by me for the purpose of obtaining the contract to which this Exhibit is attached remains true and correct in all respects as if made as of the date of this Contract Affidavit and as if fully set forth herein.

I DO SOLEMNLY DECLARE AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE CONTENTS OF THIS AFFIDAVIT ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE, INFORMATION, AND BELIEF.

Date: \_\_\_\_\_

By: \_\_\_\_\_ (printed name of Authorized Representative and affiant)

\_\_\_\_\_  
(signature of Authorized Representative and affiant)

**.26 Commercial Nondiscrimination Clause.**

A. The following provision is mandatory for all State contracts and subcontracts: "As a condition of entering into this Agreement, Contractor represents and warrants that it will comply with the State's Commercial Nondiscrimination Policy, as described under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland. As part of such compliance, Contractor may not discriminate on the basis of race, color, religion, ancestry, national origin, sex, age, marital status, sexual orientation, sexual identity, genetic information or an individual's refusal to submit to a genetic test or make available the results of a genetic test or on the basis of disability, or other unlawful forms of discrimination in the solicitation, selection, hiring, or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Contractor retaliate against any person for reporting instances of such discrimination. Contractor shall provide equal opportunity for subcontractors, vendors, and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that this clause does not prohibit or limit lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the marketplace. Contractor understands that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification of Contractor from participating in State contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party.

B. The following provision is mandatory for all State contracts: "As a condition of entering into this Agreement, upon the request of the Commission on Civil Rights, and only after the filing of a complaint against Contractor under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, as amended from time to time, Contractor agrees to provide within 60 days after the request a complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past 4 years on any of its contracts that were undertaken within the State of Maryland, including the total dollar amount paid by Contractor on each subcontract or supply contract. Contractor further agrees to cooperate in any investigation conducted by the State pursuant to the State's Commercial Nondiscrimination Policy as set forth under Title 19 of the State Finance and Procurement Article of the Annotated Code of Maryland, and to provide any documents relevant to any investigation that are requested by the State. Contractor understands that violation of this clause is a material breach of this Agreement and may result in contract termination, disqualification by the State from participating in State contracts, and other sanctions."



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### Administrative History

Effective date: July 1, 1981 (8:13 Md. R. II-5)

Regulation .09A amended effective May 6, 1985 (12:9 Md. R. 816)

Chapter revised effective January 9, 1989 (15:27 Md. R. 3138)

Regulation .03 amended effective August 2, 1993 (20:15 Md. R. 1221)

Regulation .05 amended effective October 2, 2000 (27:19 Md. R. 1730); July 9, 2001 (28:13 Md. R. 1216)

Regulation .08 amended effective December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .11A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .12A amended effective November 22, 1993 (20:23 Md. R. 1086)

Regulation .14 amended effective May 13, 2013 (40:9 Md. R. 789)

Regulation .18 amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .20 amended effective January 26, 1998 (25:2 Md. R. 79); December 25, 2000 (27:25 Md. R. 2284); January 2, 2017 (43:26 Md. R. 1449)

Regulation .25 amended effective October 1, 1990 (17:19 Md. R. 2322); August 2, 1993 (20:15 Md. R. 1221); August 8, 2011 (38:16 Md. R. 946); May 13, 2013 (40:9 Md. R. 789)

Regulation .25D amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26 adopted as an emergency provision effective August 8, 1997 (24:18 Md. R. 1294); emergency status rescinded effective October 16, 1997 (24:23 Md. R. 1608)

Regulation .26 adopted effective March 12, 2007 (34:5 Md. R. 562)

Regulation .26A amended effective January 2, 2017 (43:26 Md. R. 1449)

Regulation .26B amended effective March 5, 2012 (39:4 Md. R. 338)